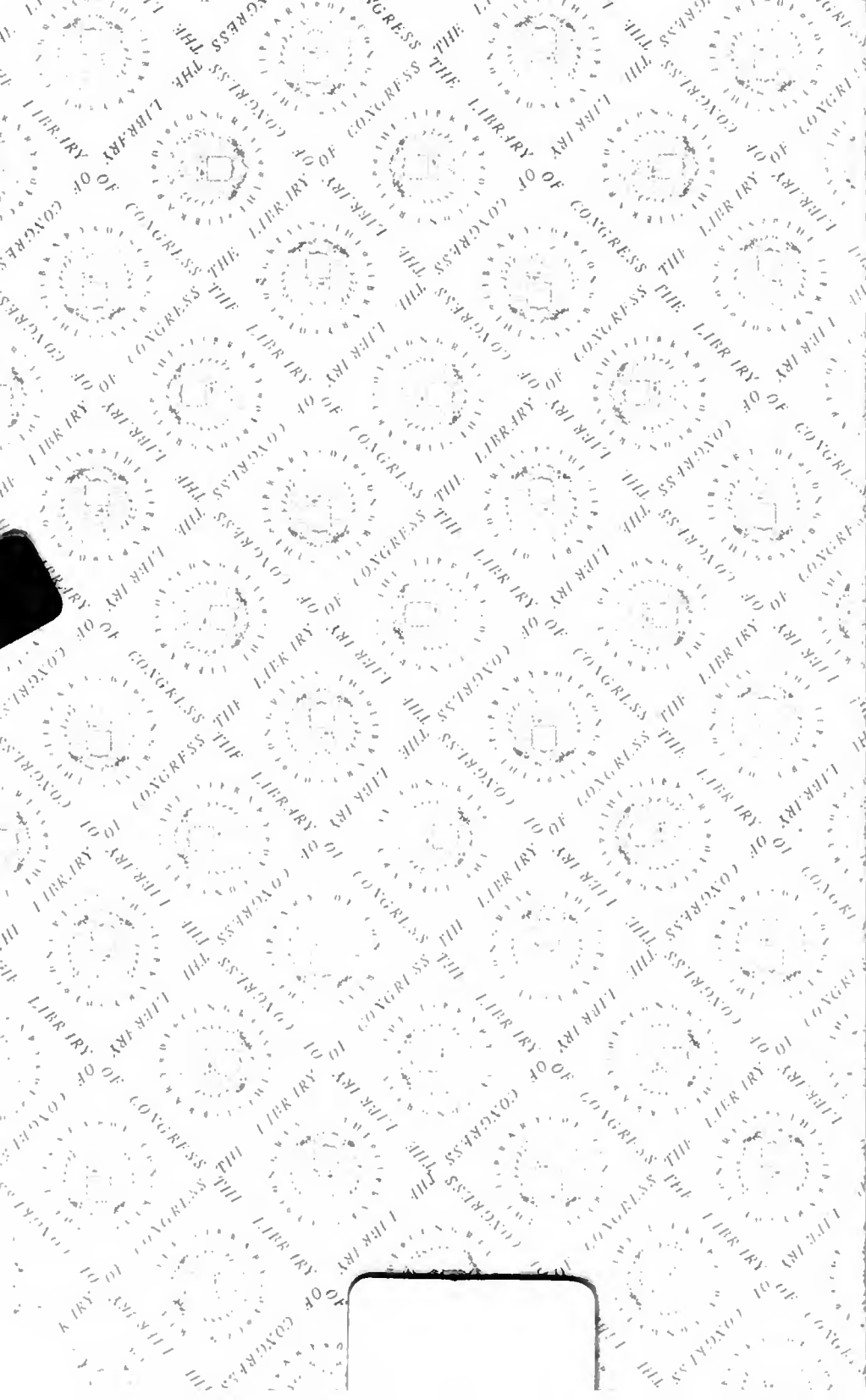
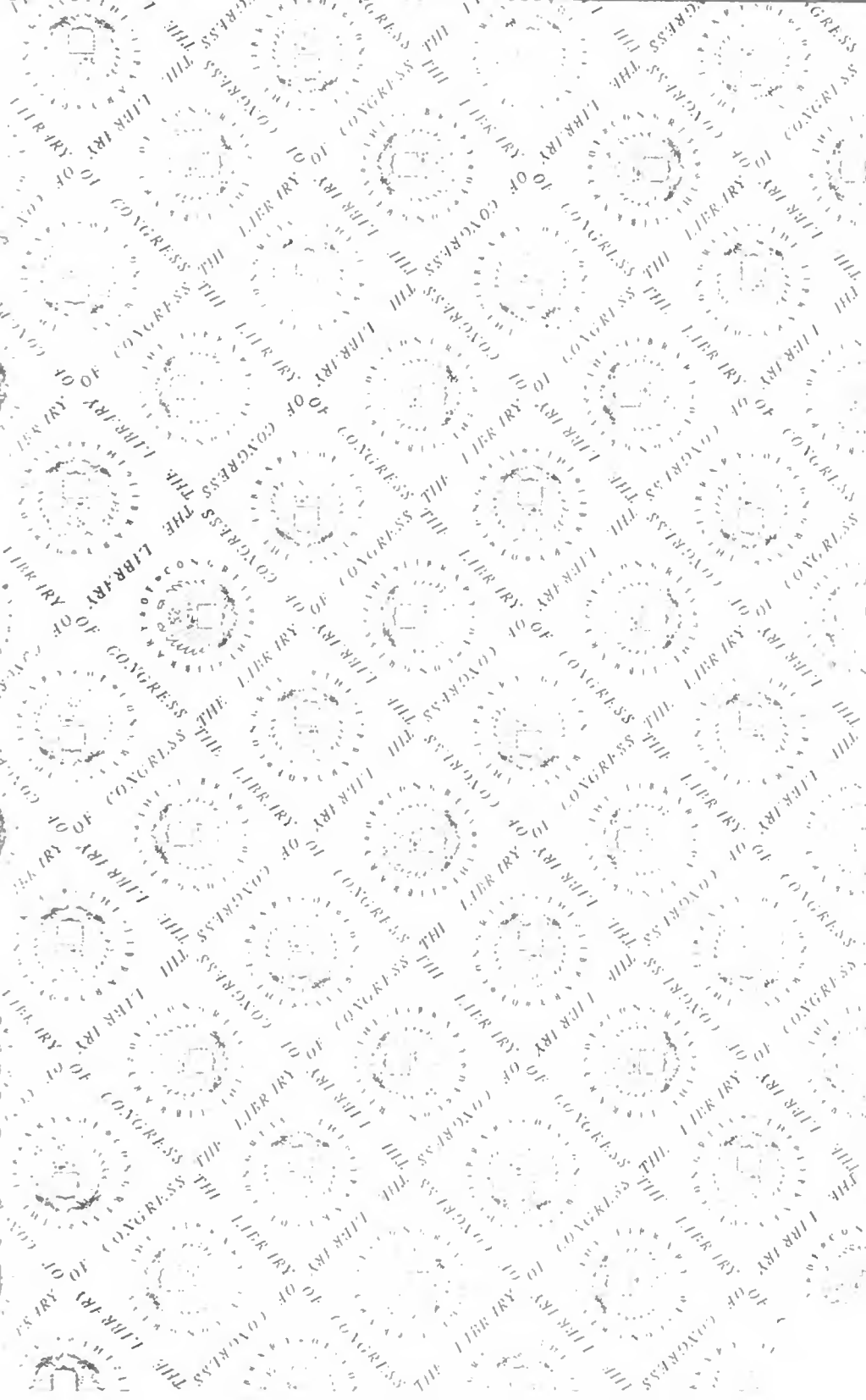


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# LEGISLATION RELATING TO ORGANIZED CRIME

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HEARINGS

BEFORE

SUBCOMMITTEE NO. 5

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 468, H.R. 1246, H.R. 3021, H.R. 3022,  
H.R. 3023, H.R. 3246, H.R. 5230, H.R. 6571,  
H.R. 6572, H.R. 6909, H.R. 7039

BILLS TO PROVIDE FOR NEW FEDERAL CRIMINAL  
STATUTES

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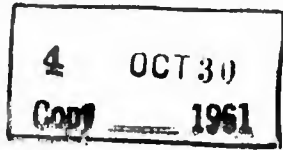
MAY 17, 18, 19, 24, 25, 26, 31, 1961

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Serial No. 16

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Printed for the use of the Committee on the Judiciary





# LEGISLATION RELATING TO ORGANIZED CRIME

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~~LAW~~

*U.S. Congress. House.*

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# LEGISLATION RELATING TO ORGANIZED CRIME

WEDNESDAY, MAY 17, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE No. 5,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Members present: Representatives Celler (chairman of the subcommittee), Rodino, Rogers, Holtzman, Donohue, Toll, McCulloch, and Meader.

Also present: Representatives Willis and Cramer; William R. Foley, General Counsel; Richard C. Peet and William H. Crabtree, associate counsel.

The CHAIRMAN. The committee will come to order.

The committee wishes to welcome the distinguished Attorney General, Robert F. Kennedy. We covet his advice and counsel on the most important bills before us.

The Office of the Attorney General, gracefully and ably filled by Robert Kennedy, reminds us of some of his predecessors who have graced that Office and then journey on to the Supreme Court. I refer to Harlan F. Stone, my own dean at Columbia University Law School who was the Attorney General and then went on to the Supreme Court.

I refer to Frank Murphy, who likewise traveled that road; Robert Jackson; Tom Clark. Who knows, Mr. Attorney General, maybe faith and hard work, a truly dedicated life, and wonderful service, will cause the judicial high office to be placed around you likewise.

Mr. KENNEDY. I question that, Mr. Chairman.

The CHAIRMAN. We are most happy to have you here this morning.

The Chair wishes to make a statement followed by a statement by our distinguished ranking minority member, Mr. McCulloch, of Ohio.

This morning Subcommittee No. 5 undertakes the first of a series of hearings covering 6 days concerning certain proposals dealing with crime which, in the main, have been submitted by the Attorney General of the United States. Other bills are to be considered which have been offered by individual Members. I, some of my colleagues on the committee, notably, our distinguished ranking minority member, Representative McCulloch, of Ohio, as well as other members, have sponsored certain of these proposals. Briefly, they cover such subjects as prohibition of interstate travel in support of racketeering; a prohibition of interstate use of wire communications for betting; a prohibition of interstate transportation of gambling materials; innum-

nity for certain witnesses in labor management racketeering cases, and an extension of the Fugitive Felon Act.

Any proposal which extends Federal criminal jurisdiction is of the utmost importance to each and everyone of us, and therefore, commands from us as legislators a vigilant and diligent attitude of study and reflection. Because of the scope and the impact of these proposals, it has been determined that the best interests of all can be served by full and adequate hearings. For this reason, not only have all interested governmental departments and agencies been requested to submit their views, but members of the organized legal profession, as well as members of the legal teaching profession, have been asked to air their comments, both criminal prosecutors and criminal defense attorneys have been invited to testify. The views of organized labor and of common carriers will be heard.

Over the years the problem of crime and the criminal has been a growing cancer in our society. It has increased not only in volume but in its complexity. It is indeed a truism today that crime knows no State boundaries. If we look back to the twenties to the use of the automobile as a means of transportation we readily see State boundaries obliterated in criminal transactions. Crime is now mobile. In dealing with the question of criminals, and particularly organized crime, we must be constantly cognizant of the changing mores which have taken place among the people of this Nation over the past 25 to 50 years. Our family life and community life have undergone metamorphoses which have affected deeply our social values. The experience of prohibition, the impact of two World Wars have left their marks on our social attitudes. Normally, society reacts slowly to a change in conditions which impairs the efficacy of its law. However, in the case of organized crime or syndicated racketeering, the reaction of the public has not been one of hesitancy but rather of militant, immediate action.

In the late twenties and early thirties this reaction caused an expansion of Federal criminal jurisdiction. It was expanded over offenses not only where the Federal Government alone was competent to act but also in the form of Federal aid and assistance to State and local law enforcing agencies.

Since the end of World War II there has been ample evidence that the growth and the strength—we might almost say the death grip—of organized crime have increased immensely. The evidence produced by such conferences and studies as the Attorney General's Conference on Organized Crime in 1950; the Senate's Special Committee to Investigate Organized Crime in Interstate Commerce; the American Bar Association's Commission on Organized Crime, and most recently, the Select Committee of the Senate on Improper Activities in the Labor and Management Field, amply demonstrates and proves the danger posed to our society and our form of government by organized crime. We know now that millions of dollars annually—illicit gains from narcotics, gambling, prostitution, extortion—are being funneled into legitimate business and union enterprises. While giving to the criminal a facade of legitimate interest we know that the criminal element is still operating as criminals. Moreover, this situation poses a threat to local as well as State and Federal Governments. The corruption and bribery which the criminal underworld engages in daily may well undermine the structure of those governments.

Thus, it can be said that there is ample need for these hearings to meet the problem of syndicated crime as it exists and as we know it today in America. But, on the other hand, a word of caution is necessary. Whenever there is an expansion of Federal criminal jurisdiction as an auxiliary to State law enforcement a studied and deliberate approach to such expansion is most necessary. Basically, many of these organized crimes are local problems and, thus, to expand Federal jurisdiction over them would create many new difficulties. Additional Federal administrative problems may arise. There may be a tendency to weaken local enforcement efforts due to Federal intervention. There is the serious problem also of the anomalies arising out of dual jurisdiction, such as dual prosecution—Federal and State—for the same crime, the question of immunity, the filing of detainers, the disparity of sentencing.

Far more important than these practical procedural problems is the question of protecting our constitutional rights at all times for all people under all circumstances. This is a time when we must be most cautious and exercise great restraint. Our legal system has evolved a philosophy which protects the rights and liberties of all. Despite the stress and strain which this threat of organized crime places upon the fabric of society, we must be ever vigilant and forestall the slightest invasion of these civil liberties which we have built up over the years. If we are not aware of the civil liberties issue we might create the overzealousness, the desire for revenge and retributive justice, which could bring us closer to the police state. Revenge, the sages tell us, never remains unrevenged. Thus, the weakening of the fabric of that great principle of due process of law encourages future and further deprivations of that principle. The law must stand firm and not waver under the pressure of emotion or sensationalism, but must stand upright in face of hysteria and grow as a result of objective thinking and deep knowledge. It is well to remember the motto of the District of Columbia—right in our midst—“Justice to All.”

As part of this statement I wish to read an editorial which appeared in the February 1961 issue of the Journal of the American Judicature Society, which editorial, I believe, is most apropos to our consideration and thinking during the course of these hearings; it is called “Hairsplitting and Constitutional Rights”:

It was to be expected that there would be a lot of unhappiness over the reversal by the U.S. court of appeals of the conviction of the defendants in the so-called Apalachin conspiracy trial. Columnist John Crosby said the country is “sinking in a sea of corruption and judges continue to split hairs.”

“The unhappy fact is,” said the Utica (N.Y.) Daily Press, “that when the judges are right by the book it often gives aid to an enemy of society. This may be proof of the soundness of our governmental system, but how long can it remain sound when evil forces are at work undermining it?”

That is the end of the editorial. The article goes on:

Certainly we may sympathize with the feelings of frustration that must be held by the law enforcement officers and prosecutors in that case. They are engaged in a continuous running battle with a highly organized, well-financed criminal syndicate that is bound by no rules. A large number of its members had gathered in Apalachin that day and it is inconceivable that they had come so far merely to hold hands with their sick friend. Nobody really doubts that some kind of nefarious business was being cooked up, and the impetuous departure of some of the crowd on foot across the fields when the police cars were discovered suggests something more than mere concern for the right of privacy.

When you move a piece of furniture and uncover a bunch of cockroaches, your impulse is to step on them. If this unsavory assemblage of ne'er-do-wells could have been put summarily behind bars, it would almost certainly have been a staggering blow to organized crime in New York, America, and the world.

The trouble is that if constitutional rights are not for all the people we cannot be sure of them for any of us. One of the greatest reigns of terror in modern times was, believe it or not, by law enforcement officials—the Nazi Gestapo. They have their counterpart today in the secret police of other nations that are more concerned about results than about constitutional rights.

We do not question the integrity of the officers and prosecutors in the *Apalachin* case. We are confident that they were and are high-minded, dedicated men, doing a difficult and dangerous job with energy, courage, and initiative, and that they are as devoted to the ideals of Americanism as are the judges of the court of appeals.

But it is the nature of their work to press for results, and to meet the enemy's freedom of action by doing as much as they can within the rules by which they are bound, and to stretch those rules to the limit on occasion. Judges and editors, in a similar position, would doubtless do the same.

It may seem like hairsplitting to release these defendants because the legal evidence did not support their conviction, but to keep them in detention without sound legal basis for doing so is to take the first big step that leads to the knock on the door at midnight.

It is the pride of Anglo-American law that a man is presumed innocent until he is proven guilty and that we prefer to let the guilty go free than to punish the innocent. Critics may think this is a weakness, but it is our greatest strength.

The fight against crime can never be fully won until human nature is changed. In the meantime, the zeal of the prosecutor must never fail to be subject to the restraint of the judge. Without it, the police state is upon us.

Consistent with the above editorial, we Members of Congress have to take positions which are unpopular, we may have to rise above the cries for revenge and retributive justice. There are times when we have to bear the slings and arrows of disapproval. At times like this, it is well to be reminded of the action of John Adams when he defended the British soldiers charged with high crimes resulting from the Boston Massacre. He said in his diary:

The part I took in defense of Captain Preston and the soldiers procured me anxiety and obliquy enough. It was, however, one of the most gallant, generous, manly, and disinterested actions of my whole life, and one of the best pieces of service I ever rendered to my country.

Now, we would be very happy to hear from our distinguished colleague from Ohio.

#### STATEMENT OF HON. WILLIAM M. McCULLOCH, A REPRESENTATIVE FROM OHIO

MR. McCULLOCH. Mr. Chairman, I am pleased that the chairman has scheduled hearings on the important bills which would strengthen the criminal laws of the United States.

In particular, the Congress should give careful consideration to the growth of syndicated criminal enterprises which are no longer confined within the boundaries of any one of the several States. In short, many of us in Congress, and in the executive department of the Federal Government, have long been aware of the ever-increasing difficulty faced by local law enforcement officers in coping with the so-called racketeering offenses, and offenders.

These offenses, which are not local in their overall operation and execution, may well justify the intervention of the Federal Government after we have listened to and developed all the pertinent facts.

At this point, I hasten to add that because of the potentially far-reaching consequences of much of the proposed legislation, I am particularly interested in hearing and exploring the views and recommendations of local law enforcement officials.

The hearings, in my opinion, should take all needed time in studying and defining crimes which fall in this category. In other words, since this is a new field, the hearings should be investigative and factfinding in nature in order to insure that a real need exists for the proposed or for other legislation, and that we can expect and get full cooperation from local law enforcement officers.

I also wish to point out that the approach to this legislation should be completely nonpartisan—particularly since the legislative proposals of the Kennedy administration are substantially the same as the proposals of the Eisenhower administration on which Congress failed to act.

In fact, I introduced one of the proposals last year, the amendment to the Fugitive Felon Act, which I have again introduced this year in the form that it passed the House. The other proposals of Attorney General Rogers, on which there has been no previous action by this committee, were introduced both last year and this year by my colleague on the full committee, Mr. Cramer.

Thus, the witnesses and the public need not fear that there will be a lack of bipartisan support for the measures which have real merit or that there has not already been considerable thought given to these measures by the executive departments of the previous, as well as the present, administration.

Therefore, we should be able to move with considerable speed with legislative action which has been too long delayed.

(The bills H.R. 468, H.R. 1246, H.R. 3021, H.R. 3022, H.R. 3023, H.R. 3246, H.R. 5230, H.R. 6571, H.R. 6572, H.R. 6909, and H.R. 7039 referred to are as follows:)

[H.R. 468, 87th Cong., 1st sess.]

A BILL To amend section 1073 of title 18, United States Code, the Fugitive Felon Act

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the first paragraph of section 1073 of title 18 of the United States Code is amended to read as follows:

"Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or imprisonment for a term exceeding one year under the laws of the place from which the fugitive flees, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by imprisonment in a penitentiary is charged, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

[H.R. 1246, 87th Cong., 1st sess.]

A BILL To amend the provisions of law which permit the granting of immunity from prosecution in certain cases where testimony is compelled, so as to include cases involving matters affecting interstate or foreign commerce or the free flow thereof

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That subsection (a) of section 3486 of title 18 of the United States Code is amended by inserting "(A)" after "relating to" and by inserting after "by force or violence" the following: ", or (B) any matter which affects interstate or foreign commerce or the free flow thereof,".

SEC. 2. Subsection (c) of such section is amended by inserting "(1)" after "United States involving" and by inserting after "Nationality Act (66 Stat. 182-186; 204-206; 240-241)" the following: ", or (2) any matter which affects interstate or foreign commerce or the free flow thereof,".

---

[H.R. 3021, 87th Cong., 1st sess.]

A BILL To amend chapter 95 of title 18, United States Code, to permit the compelling of testimony under certain conditions and the granting of immunity from prosecution in connection therewith

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1952. Immunity of witnesses.

"Whenever in the judgment of a United States Attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of section 1951 of this title or of section 302 of the Act of June 23, 1947 (61 Stat. 157; 29 U.S.C. 186), or of any conspiracy involving the foregoing, is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under the provisions of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section."

SEC. 2. The analysis of chapter 95 of title 18, United States Code, is amended by inserting after

"1951. Interference with commerce by threats or violence."

the following:

"1952. Immunity of witnesses."

---

[H.R. 3022, 87th Cong., 1st sess.]

A BILL To amend title 18 of the United States Code to assist in the prevention of the interstate transmission of gambling information

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 1081 of title 18 of the United States Code is amended by adding at the end thereof the following new paragraphs:

"The term 'gambling information' means information relating to, or which might be used in, the process of making, settling, paying, registering, evidencing, or recording any wager.

"The term 'wager' means—

"(1) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

"(2) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

"(3) any wager placed in a lottery conducted for profit. For the purposes of this definition, the term 'lottery' includes the numbers game, policy, and similar types of wagering. The term does not include—

"(A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes

or other property is made, in the presence of all persons placing wagers in such game, and

"(B) any drawing conducted by an organization exempt from tax under sections 501 and 521 of the Internal Revenue Code of 1954, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual."

SEC. 2. Chapter 50 of title 18 of the United States Code is amended by adding at the end thereof the following new sections:

**"§ 1084. Affidavits respecting interstate or foreign transmission of gambling information**

"(a) Each person required to pay a special tax under subchapter B of chapter 35 of subtitle D of the Internal Revenue Code of 1954 shall, at the time he registers as required by such subchapter, submit for transmittal to the Attorney General an affidavit stating (1) whether he has or has not, during the preceding twelve months, transmitted gambling information in interstate or foreign commerce, and whether he has or has not, during such period, received gambling information so transmitted, and (2) whether he intends or does not intend to transmit gambling information in interstate or foreign commerce during the period the registration is in effect, and whether he intends or does not intend to receive such information so transmitted during such period.

"(b) Any person whose intention expressed in an affidavit submitted under this section changes during the period the registration is in effect shall, within ten days, submit a revised affidavit to the Attorney General.

**"§ 1085. Failure to file affidavit; false affidavit**

"Whoever files an affidavit required by section 1084 which is false or misleading shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

"Whoever fails to file an affidavit which is required under section 1084 shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

**"§ 1086. Providing communications service without affidavit**

"Whoever, being a common carrier by wire or radio, provides communication services to any person whom it has reason to believe is a person required by section 4412(a) of the Internal Revenue Code of 1954 to be registered; or

"Whoever, being an employee of a common carrier by wire or radio, assists in providing any communications service, or assists in the installation of any equipment to be used to provide any communications service, to any person he has reason to believe is a person required by section 4412(a) of the Internal Revenue Code of 1954 to be registered—

"without informing the Department of Justice of the circumstances which give rise to such belief shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

SEC. 3. The analysis at the beginning of chapter 50 of title 18 of the United States Code is amended by adding at the end thereof the following:

"1084. Affidavits respecting interstate or foreign transmission of gambling information.

"1085. Failure to file affidavit; false affidavit.

"1086. Providing communications services without affidavit.

---

[H.R. 3023, 87th Cong., 1st sess.]

A BILL To amend section 1073 of title 18, United States Code, the Fugitive Felon Act

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the first paragraph of section 1073 of title 18 of the United States Code is amended to read as follows:

"Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or imprisonment for a term exceeding one year under the laws of the place where the fugitive flees, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by imprisonment in a penitentiary is charged, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

[H.R. 3246, 87th Cong., 1st sess.]

A BILL To provide means for the Federal Government to combat interstate crime and to assist the States in the enforcement of their criminal laws by prohibiting the interstate transportation of wagering paraphernalia

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That chapter 95 of title 18, United States Code, is amended by adding the following new section at the end thereof:

"§ 1952. Interstate transportation of wagering paraphernalia

"Whoever except a common carrier in the usual course of its business carries or sends in interstate or foreign commerce any records or paraphernalia used or intended or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years or both."

By adding the following item to the analysis of the chapter:

"1952. Interstate transportation of wagering paraphernalia."

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[H.R. 5230, 87th Cong., 1st sess.]

A BILL To punish the use of interstate commerce in furtherance of conspiracies to commit organized crime offenses against any of the several States

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the analysis of chapter 19 of title 18, United States Code, is amended by inserting immediately after item 372 the following new items:

"373. Conspiracy to commit organized crime offense against any of the several States.

"374. Conspiracies resulting in murder, maiming, or great bodily harm."

SEC. 2. Title 18, United States Code, is further amended by inserting immediately after section 372 of such title the following new sections:

"§ 373. Conspiracy to commit organized crime offense against any of the several States

"If two or more persons conspire to commit any organized crime offense against any of the several States, and one or more of such persons, to effect the object of the conspiracy, delivers for shipment or transports in interstate commerce any article, or deposits in the mail or sends or delivers by mail any letter, package, postal card, or circular, or transmits or causes to be transmitted in interstate commerce any message or communication by wire or radio, or receives any article, letter, package, postal card, circular, message, or communication after such shipment, transportation, sending, delivery, or transmission, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is punishable by a lesser maximum fine or imprisonment than provided in this section, the maximum punishments for such conspiracy shall not exceed such lesser maximums.

"As used in this section, the term 'organized crime offense' means any offense proscribed by the laws of or the common law as recognized in any State relating to gambling, narcotics, extortion, intoxicating liquor, prostitution, criminal fraud, or false pretenses, or murder, maiming, or assault with intent to inflict great bodily harm, and punishable by imprisonment in a penitentiary or by death.

"§ 374. Conspiracies resulting in murder, maiming, or great bodily harm

"If as a result of any conspiracy violating section 371, 372, or 373 of this chapter, any person is murdered, maimed, or subjected to great bodily harm, each conspirator shall, in lieu of any other penalty or limitation, be punished as herein prescribed: (1) by death if any person is murdered and if the verdict of the jury shall so recommend; (2) by imprisonment for any term of years or for life if any person is murdered and if the death penalty is not imposed; or (3) by imprisonment for not more than ten years if any person is maimed or subjected to great bodily harm."

[H.R. 6571, 87th Cong., 1st sess.]

A BILL To provide means for the Federal Government to combat interstate crime and to assist the States in the enforcement of their criminal laws by prohibiting the interstate transportation of wagering paraphernalia

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That chapter 95 of title 18, United States Code, is amended by adding the following new section at the end thereof:

"§ 1952. Interstate transportation of wagering paraphernalia

"Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years or both."

and by adding the following item to the analysis of the chapter:

"§ 1952. Interstate transportation of wagering paraphernalia."

[H.R. 6572, 87th Cong., 1st sess.]

A BILL To amend title 18, United States Code, to prohibit travel in aid of racketeering enterprises

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That chapter 95 of title 18, United States code, is amended (a) by adding the following new section at the end thereof:

§ 1952. Interstate and foreign travel in aid of racketeering enterprises

"(a) Whoever travels in interstate or foreign commerce with intent to—

"(1) distribute the proceeds of any unlawful activity; or

"(2) commit any crime of violence to further any unlawful activity; or

"(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity

shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

"(b) As used in this section 'unlawful activity' means (1) any business enterprise involving gambling, liquor, narcotics, or prostitution offenses in violation of the laws of the state in which they are committed or of the United States, or (2) extortion or bribery in violation of the laws of the state in which committed or of the United States.

"(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury."

and (b) by adding the following item to the analysis of the chapter:

"Sec. 1952. Interstate and foreign travel in aid of racketeering enterprises.

[H.R. 6909, 87th Cong., 1st sess.]

A BILL To strengthen the criminal laws so as to further protect all persons from the menace of organized and syndicated crime, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Antiracketeering Act of 1961".

## TITLE I

### OFFICE ON SYNDICATED CRIME

SEC. 101. There is hereby established in the Department of Justice an Office on Syndicated Crime (hereinafter referred to as the "Office"), which shall be headed by a Director, who shall act as a Special Assistant to the Attorney

General, appointed by the President, by and with the advice and consent of the Senate, who shall receive compensation at the rate of \$20,000 per annum.

SEC. 102. (a) The Office shall assemble, correlate, and evaluate intelligence procured by other agencies, both Federal and State, relating to the operations of syndicated crime. In carrying out this subsection, the Office shall include in its activities studies of the organizations, operations, and individuals connected with syndicated crime.

(b) The Office shall make available to Federal agencies intelligence relating to syndicated crime assembled by it. The Office, at the discretion of the Director, and with the approval of the Attorney General, may make such intelligence available to non-Federal governmental law enforcement agencies.

(c) The Office shall seek to develop specialized techniques for the prosecution of syndicated crime. Such techniques shall be designed so as to fully utilize the information developed by the Office.

(d) The Office shall, where appropriate, advise and assist in the prosecution of persons accused of violation of Federal law, and may advise and assist in prosecutions of persons involved in syndicated crime by non-Federal governmental law enforcement agencies, upon the approval of the Attorney General, if requested to do so by such agencies.

(e) For the purposes of this section, "syndicated crime" shall be deemed to mean substantial concerted activities in, or affecting, interstate or foreign commerce, where any part of such activities involve violations of law, Federal or non-Federal.

SEC. 103. Subject to such exceptions as may be prescribed by the President in the interests of national security, each officer and agency of the Federal Government shall establish routine procedures which will provide the Office with such information as the Director, pursuant to rules and regulations prescribed by the Attorney General, after consultation with such officers and agencies, may prescribe to carry out the purposes of this title, and each such officer and agency shall cooperate fully with the Director of the Office. Each such agency shall, where feasible, conduct such studies and investigations as the Director, upon approval of the Attorney General, may request.

## TITLE II

### TERRORISTIC CRIMES

SEC. 201. Chapter 19 of title 18 of the United States Code is amended by inserting immediately after section 372 the following new section:

#### "§ 373. Conspiracy to commit terroristic crimes; Federal assistance; penalties

"(a) If two or more persons conspire to commit or cause to be committed any terroristic offense prohibited by this section each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

"As used in this section, the term 'terroristic offense' means any offense proscribed by the laws of, or the common law as recognized in, any State relating to extortion, blackmail, murder, racketeering, narcotics, maiming, or assault with intent to inflict great bodily harm, and punishable by imprisonment in a penitentiary or by death, that are perpetrated through the use of interstate or foreign commerce or communication.

"(b) If as a result of the violation of subsection (a) of this section any person is murdered, maimed, or subjected to great bodily harm, the punishment shall be: (1) death, if any person is murdered and if the verdict of the jury shall so recommend; (2) imprisonment for any term of years or for life if any person is murdered and if the death penalty is not imposed; or (3) imprisonment for not more than ten years if any person is maimed or subjected to great bodily harm.

"(c) (1) Upon the application of a duly authorized State or local official setting forth that a violation of such State law is of such an interstate nature as to make it impractical to enforce the laws of the State within relation to any of the offenses enumerated herein through the law enforcement facilities available to the State, the Attorney General may invoke such Federal investigating, prosecuting, and other services at his disposal as he considers necessary to enforce the provisions of this section.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the Attorney General may use such Federal means as he considers necessary to enforce the provisions of this section where any violation or violations of this section obstruct the execution of other laws of the United States or impede the

course of justice under those laws or, upon request of a duly authorized State or local official, when, in such official's opinion, any local law enforcement officials of the State fail or refuse to enforce violations of State law which are also violations of this section."

SEC. 202. The analysis at the beginning of chapter 19 of title 18 of the United States Code is amended by adding at the end thereof the following:

"373. Conspiracy to commit terroristic crimes; Federal assistance; penalties."

### TITLE III

#### CRIMINAL EXPENDITURES

SEC. 301. (a) Part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"Sec. 274. Criminal expenditures.

"No deduction otherwise allowable under this subtitle shall be allowed for any amount paid or incurred for rent, wages, or salaries if, under any statutes of the United States, or of the State, territory, or possession of the United States in which such amount is paid or incurred, the payment of such amount constitutes a crime punishable by fine or imprisonment or both."

(b) The amendments made by this section shall apply to taxable years ending after the date of enactment of this Act but only with respect to amounts paid or incurred after such date.

SEC. 302. The analysis at the beginning of part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following:

"274. Criminal expenditures."

### TITLE IV

#### TRANSMISSION OF GAMBLING INFORMATION

SEC. 401. Section 1081 of chapter 50 of title 18 of the United States Code is amended by adding at the end thereof the following new paragraphs:

"The term 'gambling information' means information relating to, or which might be used in, the process of making, settling, paying, registering, evidencing, or recording any wager.

"The term 'wager' means—

"(1) any wager with respect to a sports event of a contest placed with a person engaged in the business of accepting such wagers,

"(2) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

"(3) any wager placed in a lottery conducted for profit. For the purposes of this definition, the term 'lottery' includes the numbers game, policy, and similar types of wagering. The term does not include—

"(A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and

"(B) any drawing conducted by an organization exempt from tax under sections 501 and 521 of the Internal Revenue Code of 1954, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual."

SEC. 402. Chapter 50 of title 18 of the United States Code is amended by adding at the end thereof the following new sections:

"§ 1084. Affidavits respecting interstate or foreign transmission of gambling information

"(a) Each person required to pay a special tax under subchapter B of chapter 25 of subtitle D of the Internal Revenue Code of 1954 shall, at the time he registers as required by such subchapter, submit for transmittal to the Attorney General an affidavit stating (1) whether he has or has not, during the preceding twelve months, transmitted gambling information in interstate or foreign commerce, and whether he has or has not, during such period, received gambling information so transmitted, and (2) whether he intends or does not intend to transmit gambling information in interstate or foreign commerce during the period the registration is in effect, and whether he intends or does not intend to receive such information so transmitted during such period.

"(b) Any person whose intention, expressed in an affidavit submitted under subsection (a) (2) of this section, changes during the period the registration is in effect shall, within ten days, submit a revised affidavit to the Attorney General.

"§ 1085. Failure to file affidavit; false affidavit

"Whoever files an affidavit required by section 1084 which is false or misleading shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

"Whoever fails to file an affidavit which is required under section 1084 shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

"§ 1086. Providing communications service without affidavit

"Whoever, being a common carrier by wire or radio, provides communication services to any person whom it has reason to believe is a person required by section 4412(a) of the Internal Revenue Code of 1954 to be registered; or

"Whoever, being an employee of a common carrier by wire or radio, assists in providing any communications service, or assists in the installation of any equipment to be used to provide any communications service, to any person he has reason to believe is a person required by section 4412(a) of the Internal Revenue Code of 1954 to be registered—

"without informing the Department of Justice of the circumstances which give rise to such belief shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

SEC. 403. The analysis at the beginning of chapter 50 of title 18 of the United States Code is amended by adding at the end thereof the following:

"1084. Affidavit respecting interstate or foreign transmission of gambling information

"1085. Failure to file affidavit; false affidavit.

"1086. Providing communications services without affidavit."

## TITLE V

### GAMBLING DEVICES

SEC. 501. Section 1171(a) (2) of chapter 24 of title 15 of the United States Code is amended to read as follows:

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money, property, or thing of value, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money, property, or thing of value provided that the provisions of this subsection shall not apply to parimutuel betting equipment or materials used or designed for use at racetracks where betting is legal under applicable State laws; or".

SEC. 502. Section 1171 of chapter 24 is further amended by adding at the end thereof the following new subsections:

"(d) The term 'interstate commerce' includes commerce between one State, possession, or the District of Columbia and another State, possession, or the District of Columbia.

"(e) The term 'foreign commerce' includes commerce with a foreign country.

"(f) The term 'intrastate commerce' includes commerce wholly within one State, the District of Columbia, or possession of the United States".

SEC. 503. The first paragraph of section 1172 of chapter 24 is amended to read as follows:

"It shall be unlawful knowingly to transport any gambling device in interstate or foreign commerce: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section".

SEC. 504. Section 1173 of chapter 24 is amended to read as follows:

"(a) It shall be unlawful for any person during any calendar year to engage in the business of manufacturing, repairing, reconditioning, dealing in, or operating any gambling device if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce, or sells, ships, or delivers such device in interstate or foreign commerce, or sells, ships, or delivers such device knowing that it will be introduced into interstate or for-

elg commerce, unless such person shall, during the month prior to engaging in such business in that year, register with the Attorney General of the United States his name and trade name and the address of each of his places of business, designating his principal place of business within the United States.

"(b) Every person required to register under the provisions of this section shall maintain an inventory record of all gambling devices owned, possessed, or in his custody as of the close of each calendar month. The record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, together with the location of each item listed thereon.

"(c) Every person required to register under the provisions of this section shall maintain for each place of business a record for each calendar month of all gambling devices sold, delivered, or shipped in intrastate, interstate, or foreign commerce. The record of sales, deliveries, and shipments for each place of business shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part sold, delivered, or shipped together with the name and address of the buyer and consignee thereof and the name and address of the carrier.

"(d) Every person required to be registered under the provisions of this section shall maintain for each place of business a record for each calendar month of all gambling devices manufactured, purchased, or otherwise acquired. This record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part manufactured, purchased, or otherwise acquired together with the name and address of the person from whom the device was purchased or acquired and the name and address of the carrier.

"(e) Every manufacturer required to register shall number serially each assembled or partially assembled gambling device which is to be sold, shipped, or delivered, and shall stamp on the outside front of each such assembled or partially assembled gambling device, so as to be clearly visible, the number of the device, the name of the manufacturer, and the date of manufacture. And every person required to register under the provisions of this section shall record the data herein designated in the records required to be kept.

"(f) Each record required to be maintained under the provisions of this section shall be kept for a period of five years.

"(g) (1) It shall be unlawful for any person required to register under the provisions of this section to sell, deliver, ship, or possess any gambling device which is not marked and numbered as required by this section or for any person to remove, obliterate, or alter the manufacturer's name, the date of manufacture, or the serial number on any gambling device;

"(2) It shall be unlawful for any person knowingly to make, or cause to be made, any false entry in any record required to be kept under this section; and

"(3) It shall be unlawful for any person who has failed to register as required by this section or who has failed to maintain the records required by this section to manufacture, recondition, repair, sell, deliver, ship, or possess any gambling device.

"(h) Agents of the Federal Bureau of Investigation shall, at the principal place of business within the United States of any person required to register by this section, at all reasonable times have access to and the right to copy any of the records required to be kept by this section, and in case of refusal by any person registered under this section to allow inspection and copying of the records required to be kept, the United States district court where the principal place of business is located shall have jurisdiction to issue an appropriate order compelling production.

"(i) No person shall be excused from maintaining the records designated herein, producing the same or testifying before any grand jury or court of the United States with respect thereto for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a criminal penalty or forfeiture. But, upon asserting the privilege against self-incrimination, any natural person may be required to open the records designated herein to inspection or to testify before any grand jury or court of the United States with respect thereto: *Provided*, That no such person shall be criminally prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing disclosed as a result of the

inspection of such records or testimony with respect thereto. No witness shall be exempt from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

"(j) The Attorney General is authorized and directed to make and enforce such regulations as may, in his judgment, be necessary to carry out the purposes of this section and the breach of any of such regulations shall be punishable as provided in section 1176 of this chapter."

SEC. 505. "This title shall take effect on the sixtieth day after the date of its enactment."

## TITLE VI

### WAGERING PARAPHERNALIA

SEC. 601. Chapter 95 of title 18 of the United States Code is amended by adding at the end thereof the following new section:

"§ 1952. Interstate transportation of wagering paraphernalia

"Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years or both."

and by adding the following item to the analysis of the chapter:

"1952. Interstate transportation of wagering paraphernalia."

## TITLE VII

### IMMUNITY OF WITNESSES

SEC. 701. Chapter 95 of title 18 of the United States Code is amended by adding at the end thereof the following new section:

"§ 1953. Immunity of witnesses

"Whenever in the judgment of a United States Attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of section 1951 of this title or of section 302 of the Act of June 23, 1947 (61 Stat. 157; 29 U.S.C. 186), or of any conspiracy involving the foregoing, is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and, upon order of the court, such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under the provisions of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section."

SEC. 702. The analysis at the beginning of chapter 95 of title 18 of the United States Code is amended by adding after

"1952. Interstate transportation of wagering paraphernalia."

the following:

"1953. Immunity of witnesses."

## TITLE VIII

### EXTENSION OF FUGITIVE FELON ACT

SEC. 801. The first paragraph of section 1073 of chapter 49 of the United States Code is amended to read as follows:

"Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit

a crime, punishable by death or imprisonment for a term exceeding one year under the laws of the place where the fugitive flees, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by imprisonment in a penitentiary is charged, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

## TITLE IX

### WIRETAPPING

SEC. 901. Part I of title 18 of the United States Code is amended by adding at the end thereof the following new chapter:

#### "CHAPTER 119—WIRETAPPING

"Sec.

"2501. Definitions.

"2502. Interception of telephone communications by Federal officer or employee.

"2503. Unauthorized disclosures.

"2504. Illegal possession of wiretapping equipment.

"2505. Ex parte order to intercept; procedure.

"2506. Admissibility of evidence.

"2507. Interception of telephone communication by State officer or agency.

"§ 2501. Definitions

"As used in this chapter:

"(1) 'Telephone communication' means the transmission of speech and sounds of all kinds by means of the telephone.

"(2) 'Telephone line' includes all of the facilities, wires, devices, poles, apparatus, and machines and services by means of which telephone communications are carried on by a common carrier.

"(3) 'Intercepts' and 'interception' mean the obtaining of the whole or any part of a telephone communication by means of any device, contrivance, or machine, of any kind, but it shall not include eavesdropping on a party line or any act or practice done in the ordinary and usual course of business in the operation or use of a common carrier communications system by regular employees thereof.

"(4) 'Common carrier' means any person engaged, as a common carrier for hire, in telephone communication in interstate or foreign commerce, in intrastate commerce, if its communications facilities are physically connected with the communications facilities of any such carrier engaged in interstate or foreign commerce, or within the District of Columbia or any Territory or possession of the United States.

"(5) 'Person' includes an individual, partnership, association, joint-stock company, trust, or corporation, whether private or public, and regardless of public office or status.

"§ 2502. Interception of telephone communications

"Whoever, without authorization from the sender and the recipient of any telephone communication by common carrier, willfully intercepts or attempts to intercept such telephone communication, except in compliance with State law under section 2507 of this title or, in any case of an interception by a Federal officer or employee, in compliance with section 2505 of this title, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

"§ 2503. Unauthorized disclosures

"Whoever uses or divulges any information or any evidence obtained directly or indirectly by means of any telephone line interceptions for any purpose not in accordance with State law under section 2507 of this title or Federal law under section 2505 of this title shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

"§ 2504. Illegal possession of wiretapping equipment

"Whoever has in his possession any device or apparatus designed or commonly used for the interception of telephone communications under circumstances evincing an intent to use or permit the same to be used for the interception of telephone communications, or knowing the same is intended to be so used in violation of this chapter, shall be fined not more than \$2,500 or imprisoned not more than five years, or both.

"§ 2505. Ex parte order to intercept; procedure

"(a) Whenever the Attorney General has satisfied himself, on the basis of a factual showing made to him by the head of a Federal department or agency,

that a specified telephone line interception may obtain evidence of syndicated crime as defined in section 102(e) of title I of the Antiracketeering Act of 1961 or that the specified telephone line interception may enable the Federal Government to prevent such syndicated crime, he may so certify in writing and designate in such certificate any United States attorney, assistant United States attorney, or officer or attorney of the Department of Justice to apply for an ex parte court order allowing such specified telephone line interception. Such certificate shall also designate the department or agency of the United States which shall make the telephone line interception, if a court order is granted.

"The application for the ex parte court order allowing the telephone line interception shall be made to any judge of the district court of the United States for the district within which the telephone line interception is sought, or, if not such judge is readily available, to any judge of the district court of the United States for a district contiguous to the district within which the telephone line interception is sought, or, in any case, to any judge of the United States Court of Appeals or of the district court for the District of Columbia.

"Such application shall be supported by the authorizing certificate of the Attorney General together with a showing of such facts and circumstances to sustain the application as the judge on oral examination may require to satisfy himself that there is reasonable ground to believe that the requested telephone line interception will result in the procurement of evidence of syndicated crime as defined in section 102(e) of title I of the Antiracketeering Act of 1961 or that the specified telephone line interception may enable the Federal Government to prevent such syndicated crime. Each application for a court order shall be accompanied by an affidavit showing whether any previous application has been made for such order; and, if there has been a previous application, to what judge it was made and the determination made thereof and what new facts, if any, are shown upon the subsequent application that were not previously shown. If the judge determines that the required reasonable ground has been shown, he shall issue an order allowing the requested telephone line interception.

"Each such order shall specify the name or names of the person or persons whose telephone lines are to be intercepted, the exchange numbers of the telephone lines to be intercepted, the crime or crimes as to which evidence is to be obtained or which are to be prevented, the name of the Federal agency or department which will make the telephone line interception, and the period of effectiveness of the order, which shall be only for as long as the judge determines to be warranted under the circumstances, but not exceeding ninety days.

"Applications for an ex parte court order allowing telephone line interceptions, including renewals, shall be heard by the judge privately, without the presence of anyone other than the judge and the individual who presents the application and any witnesses, whom the judge deems necessary, and the hearing and order shall be kept confidential by all parties thereto, except when, consistent with such court order, the Attorney General directs otherwise. True copies of the court order shall be retained by the judge who issued the order and by the Attorney General, but the application given to the judge shall be returned to the Attorney General after the judge's action thereon. The judge's copy of his order shall be kept by him in a secure place to which only he has access.

"(b) Any individual designated by a Federal agency or department to make telephone line interceptions shall be a duly appointed investigative officer of the department or agency of the United States which the Attorney General has designated to conduct the telephone line interception.

"(c) Any court order allowing a specified telephone line interception, may be renewed, for periods not exceeding ninety days each, by the judge who originally issued the order or by any other judge having jurisdiction, but only on an application, including a certificate by the Attorney General, and supporting data warranting the extension.

"(d) Telephone line interceptions shall be authorized under this section only to obtain evidence of the commission of, or to prevent the commission of, syndicated crimes as defined in section 102(e) of title I of the Antiracketeering Act of 1961 or a conspiracy to commit such syndicated crimes.

"(e) The Attorney General shall have the power to make and publish rules and regulations applicable to all Federal departments and agencies to govern the procedure under which requests and factual showing shall be made to him for an application for an ex parte court order authorizing telephone line interceptions. Such rules and regulations may provide that the Attorney Gen-

eral may delegate his duties and responsibilities under this chapter to the Deputy Attorney General or to an Assistant Attorney General but not to any other official or person.

**"§ 2506. Admissibility of evidence**

"No evidence obtained directly or indirectly by means of a telephone line interception, or as a direct or indirect result of such an interception, shall be received in evidence in any Federal court on any matter, civil or criminal, or in any proceeding of any Federal department or agency, unless such interception was made in compliance with this chapter.

**"§ 2507. Interception of telephone communications by State officer or agency**

"No law of the United States shall be construed to prohibit the interception, by any law enforcement officer or agency of any State (or any political subdivision thereof) in compliance with the provisions of any statute of such State, of any wire or radio communication, or the divulgence, in any proceeding in any court of such State, of the existence, contents, substance, purport, effect, or meaning of any communication so intercepted, if such interception was made after determination by a court of such State that reasonable grounds existed for belief that such interception might disclose evidence of the commission of a crime."

SEC. 902. The proviso contained in section 605 of the Communications Act of 1934 is amended to read as follows: "Provided, That this section shall not apply to the interception, receiving, divulging, publishing, or utilizing the contents of (a) any radio communication broadcast or transmitted by amateurs or others for the use of the general public or relating to ships in distress, or (b) any wire communication intercepted by any individual in accordance with chapter 119 of title 18 of the United States Code."

SEC. 903. Title II of the Communications Act of 1934 is amended by adding the following new section:

**"AUTHORIZED INTERCEPTIONS**

"Sec. 223. All carriers subject to the provisions of this title are hereby authorized to permit such interception and disclosure of any telephone communication authorized under chapter 119 of title 18 of the United States Code."

**TITLE X**

**OBSTRUCTION OF AGENCY OR DEPARTMENT INVESTIGATIONS**

SEC. 1001. Chapter 73 of title 18 of the United States Code is amended by adding at the end thereof the following section:

"(a) Whoever corruptly, or by threats or force directed to any person or property, intimidates, obstructs or impedes, or endeavors to intimidate, obstruct or impede any person for the purpose of obstructing or impeding any lawful inquiry or investigation pursuant to this Act by any department or agency; or

"(b) Whoever injures, or threatens or attempts to injure, any person or property on account of any person's furnishing or having furnished information to any department or agency in connection with any lawful inquiry or investigation, pursuant to this Act,

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

SEC. 1002. The analysis of chapter 73 of title 18 of the United States Code is amended by adding at the end thereof the following:

"1510. Obstruction of agency or department investigations."

**TITLE XI**

**INTERSTATE TRAVEL IN AID OF SYNDICATED CRIMINAL ACTIVITIES**

SEC. 1101. Chapter 95 of title 18 of the United States Code is amended by adding at the end thereof the following new section:

**"1952. Interstate and foreign travel in aid of syndicated criminal activities**

"(a) Whoever travels in interstate or foreign commerce with intent to—

"(1) distribute the proceeds of any syndicated criminal activity; or

"(2) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any syndicated criminal activity

shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

"(b) As used in this section 'syndicated criminal activity' means any substantial concerted activities in, or affecting, interstate or foreign commerce, where any part of such activities involve violations of law, Federal or non-Federal.

"(c) (1) Upon application of a duly authorized State or local official setting forth any syndicated criminal activity of such an interstate nature as to make it impractical to enforce the laws of said State, the Attorney General may invoke such Federal investigating, prosecuting and other services at his disposal as he considers necessary to enforce the provisions of this section.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the Attorney General may use such Federal means as he considers necessary to enforce the provisions of this section where any violation or violations of this section obstruct the execution of other laws of the United States or impede the course of justice under those laws or upon request of a duly authorized State or local official when, in such official's opinion, any law enforcement officials of the State fail or refuse to enforce violations of State law which are also violations of this section."

Sec. 1102. The analysis at the beginning of chapter 95 of title 18 of the United States Code is amended by adding at the end thereof the following:

"1952. Interstate and foreign travel in aid of syndicated criminal activities.

[H.R. 7039, 87th Cong., 1st sess.]

A BILL To amend chapter 50 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 1081 of title 18 of the United States Code is amended by adding the following paragraph:

"The term 'wire communication facility' means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, and delivery of communications) used or useful in the transmission of writing, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission."

Sec. 2. Chapter 50 of such title is amended by adding thereto a new section 1084 as follows:

"§ 1084. Transmission of wagering information: Penalties

"(a) Whoever leases, furnishes, or maintains any wire communication facility with intent that it be used for the transmission in interstate or foreign commerce of bets or wagers, or information assisting in the placing of bets or wagers, on any sporting event or contest, or knowingly uses such facility for any such transmission, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

"(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests.

"(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, territory, possession, or the District of Columbia."

Sec. 3. The analysis preceding section 1081 of such title is amended by adding the following item:

"1084. Transmission of wagering information: Penalties."

The CHAIRMAN. Mr. Attorney General, we will be glad to hear from you.

## STATEMENT OF HON. ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES

Mr. KENNEDY. Mr. Chairman, I am here today supporting proposed legislation which we, in the Department of Justice believe can be extremely effective in combating organized crime and racketeering.

These proposals have been developed in the Department over a period of time to aid and assist local law enforcement officers in controlling hoodlums and racketeers, who in many instances have become so rich and so powerful that they have outgrown local authorities.

Some of these proposals are new. Others are revisions of proposals submitted by the prior administration. Still others were submitted by my predecessor and I have endorsed them.

There have been large scale investigations into this problem on both the national scene and at the State level. You are all familiar with the Kefauver investigation and its disclosures which shocked the Nation. In the Senate Rackets Committee's investigations into improper conduct in the labor-management field, we found organized crime and racketeering moving into that field. Both investigations highlighted problems existing in the larger cities.

Sometimes we get the impression that the general public believes that organized crime is a problem for the big cities, alone. If anyone is under that misapprehension he can be corrected very quickly by reading the report of the New York State Commission on Investigation issued in February of this year. It deals with organized crime in central New York State. Then there is a report by the General Investigating Committee to the House of Representatives of the 57th Legislature of Texas. The latter report details what I can describe only as the rape of the city of Beaumont by organized crime. What the Texas committee found to be the results of organized crime having gained control of the town, will be of interest to you.

The investigation found houses of prostitution, gambling clubs, punchboards, pinball machines, slot machines, numbers, and book-making widely distributed throughout the city. Liquor was sold to teenagers and 45 pounds of raw opium worth a half a million dollars was seized. As has been pointed out so often, gambling, liquor violations, narcotics, bribery, and corruption of local officials and labor racketeering and extortion go hand in hand.

The Texas report details the effects of organized crime as follows: The crime rate of the city rose 22 percent in 1960; desirable citizens left town; the city is in the red by \$1,125,833; \$350,000 in current checks were issued with no covering funds in the bank; within 3 years two water improvement projects ran out of money; the city is deficient in neighborhood parks and supervised recreation facilities; municipal bonds are difficult to sell; the city records were in such bad shape that independent auditors refused to certify an accounting rendered by them; and finally the efforts to attract industry to the city were sabotaged by the corrupting influence.

This appalling story has not had its ending recorded yet. An aroused citizenry currently is conducting a cleanup of what they rightly consider to be a local problem. However, we in the Federal Government can be of great assistance to them and other honest citizens.

I might say, Mr. Chairman, this would never have been exposed if it had not been for an outside committee of the legislature coming in and investigating the problem, and it was only after they held this investigation that the district attorney was ordered to be removed; the chief of police was removed from his office; a number of other members of the police department were removed, and the whole estab-

lishment within the local city government was upset. That was all done by an outside group. If it had not been for their help and assistance, these results would never have been achieved.

The opium seized in Beaumont was not grown locally in Texas. The pinball machines and other gambling devices were not manufactured there. The profits from the activities did not remain in Texas. The information so necessary to the conduct of gambling operations did not originate locally. All the information and implements flowed into Beaumont through the medium of interstate commerce. Our package of bills is designed to prohibit the use of interstate facilities for the conduct of the many unlawful enterprises which make up organized crime today.

I now would like to discuss these bills in some general terms.

I turn first to H.R. 6572, which would prohibit travel in aid of racketeering enterprises.

Organized crime is nourished by a number of activities, but the primary source of its growth is illicit gambling. From huge gambling profits flow the funds to bankroll the other illegal activities I have mentioned including the bribery of local officials.

I might just go back to Beaumont, Mr. Chairman. We looked into some of these local officials and in conjunction with the Internal Revenue Department, and where this local committee exposed the fact that they had received these bribes we looked in and found for the most part, these local officials had paid their taxes on the money they received from the gamblers and the others of the house of prostitution.

The main target of our bill is interstate travel to promote gambling. It also is aimed at the huge profits in the traffic in liquor, narcotics, prostitution, as well as the use of these funds for corrupting local officials and for their use in racketeering in labor and management. Thus, when we speak of unlawful business it is business engaged in the aforementioned improper activities.

A brief explanation of the method by which the funds are obtained by the bigtime gambling operator may be useful at this time.

Many persons think of the corner handbook operator or the neighborhood merchant, who sells a numbers ticket to him, as the person to whom we refer when we talk of the gambling racketeer. This is about as accurate as describing an iceberg as a section of the ice floating on top of the water. As with the iceberg the danger and the size of the problem can only be fully appreciated if we go below the surface.

On the surface is the handbook operator. He makes a profit from the persons who place bets with him because he has an edge on every bet. He pays track odds but usually not in excess of 20 to 1. The odds at the track are calculated after deducting the 15 percent to 18 percent of the total betting pool which goes to pay taxes and other expenses. The bookmaker pockets that amount. However, he is not a man of unlimited resources. He must balance his books so that he will lose no more on the winner than has been bet on the other horses in a race, after his percentage has been deducted. He cannot control the choices of his customers and very often he will find that one horse is the favorite choice of his clientele. His "action" as he calls it, may not reflect the "action" of the track. Therefore, he must reinsure himself on the race in much the same fashion that the casualty insurance

companies reinsure a risk that is too great for it to assume alone. To do this the bookmaker uses the "lay off" man, who for a commission, accepts the excess wager.

The local lay-off bettor also will have limited funds and his lay-off bets may be out of balance. When this occurs he calls the large lay-off bettors, who because of their funds, can spread the larger risk. These persons are gamblers who comprise a nationwide syndicate or combine. They are in close touch with each other all the time and they distribute the bets among themselves so that an overall balance is reached on any racehorse.

With a balanced book at the handbook, layoff, or syndicate level, the edge is divided and no one loses except the man who places the original bet. As an indication of the volume of business I am talking about, one of the largest operators in the combine does a layoff business of \$18 million a year. His net profit is \$720,000 a year. This is a 4-percent return on volume with relatively no risk as a result of the balancing of his books on each event.

The term "gambler" is a misnomer for these people. They accept money that the small gamblers wager but they do not gamble at all. This is further illustrated graphically by what we know as the numbers racket.

A man purchases a ticket with three numbers on it, paying a dollar for the ticket. Since there are 999 such numbers he should reasonably expect the odds to be 999 to 1. The numbers bank usually pays 600 to 1 on such a wager—or less—so you can see that the only gambler in this situation is the man making the bet. The operator pockets 40 cents on every dollar bet. That is, if the game is run honestly. That, however, is too much to expect from this group. If the play is too high on any one number they manage through devious means to insure that a number on which the play has been small will be the winner.

I might say, it has been estimated, for instance, that in the city of New York, Mr. Chairman, on numbers, that numbers amount to about approximately \$300,000 a day in that city alone.

In the city of Miami, in the Negro sections, the mayor of that city, Mayor High, has estimated it is approximately \$100,000 a week.

It is estimated that there are approximately 10,000 people in New York City alone who are employed and work in the numbers racket.

With that background on the type of business done by these persons, let me now move to their interstate travel activities to show how we hope to be of aid and assistance to local law authorities.

The examples I am going to give have a factual basis, but I will speak mainly in generalities in open session for obvious reasons.

I would be glad, Mr. Chairman, to give you all of this information regarding individuals involved and their names and the localities, in executive session, if that is your wish.

Our first example is as follows: Some notorious individuals, whose names you would immediately recognize, had interests in a numbers bank in New York but lived in Miami, Fla., far from the scene of operation. Every month a messenger carried the profits of the numbers racket from the scene of operations to the resort town. One of the payments was in excess of \$250,000. Thus, the persons reaping the profit from the illegal activity remained beyond the reach of the law enforcement officials at the place of operation and committed no

crime in the State where they lived. Only the Federal Government can curtail the flow of funds which permit the kingpins to live far from the scene, preventing the local officials, burdened by the gambling activity, from punishing them.

If our bill is enacted we will be able to prosecute the courier who carries the funds across State lines and in conjunction with the aiding and a betting statute, we will be able to prosecute the person who caused the courier to travel—namely the kingpin. This example illustrates what we have found to be a pattern around the country where the apparent innocuous 10-cent numbers bet in a large city turns into tremendous profits in the hands of bigtime hoodlums.

Another example involves the frequent travel from Middle Atlantic Pennsylvania to a New England State by the operator of a lottery—and/or members of his family—to make payments to winners or pick up money wagered. Our information reveals that, in order to avoid the statute proscribing interstate transportation of lottery tickets the individual carried the plates for printing the tickets to the various States. He did that so the tickets could be printed locally.

In another instance, the scene of illicit operations is close to the border of the State. This location is in the Midwest. One individual travels daily between the two States. He conducts his layoff business in the one State and lives in a \$200,000 house in the suburbs of a large city across the border in another State.

I might say, Congressman McCulloch, this particular individual lives in the State of Ohio. All the bad things are going on in another State.

Let me cite another example. The layoff men at the top of the bookmaking organization are in daily contact with each other to re-insure their bets and divide the action, thus assuring that all make a profit and no one takes an exorbitant risk.

These people can conduct their business by telephone. When local authorities get close to them, they merely pick up stakes and move to another jurisdiction. The best example of this moving to frustrate local police is the case of a man who started operations as a layoff man in the Midwest in 1946. He moved to another town in 1949 and then to Newport, Ky., in 1950. In 1952, under pressure of the Kefauver investigations into organized crime, he moved to Montreal, Canada. When the Royal Canadian Mounted Police raided his establishment he moved back to Newport, Ky.

We can follow these people from State to State and prosecute them for the very activities which now make a mockery of local law enforcement if this travel bill is enacted.

The layoff men, who comprise the gambling syndicate, must settle their accounts periodically for they do not trust each other any more than they trust the average bettor. They settle the accounts by having a "bagman" travel throughout the country picking up and depositing funds to balance the books. He receives reports of balances due from each of the layoff men. He acts as a clearinghouse and accountant for the group—settling the accounts in accordance with good accounting practice—in much the same manner that our banking clearinghouses operate. The only difference is that the banking houses are not afraid of divulging their incomes through the use of banking circles. The gamblers use cash and a messenger to clear the daily balances.

When a Braniff airplane crashed at Buffalo, Tex., on September 30, 1959, a collection man for a prime suspect of the Kefauver investigation, was killed. The collection man was en route to New York with his boss' share of profits—an extremely large amount of money—from gambling operations in Texas. With the enactment of this bill, prosecution may be undertaken in future situations against men like this and the persons who send them to collect the proceeds.

In summary, our information reveals numerous instances where the prime mover in a gambling or other illegal enterprise operates by remote control from the safety of another State—sometimes half a continent away. He sends henchmen to the scene of operations or travels himself from time to time to supervise the activity and check on his underlings. As for the profits, he receives his share by messenger.

Another example of the type of situation which we are trying to curb in proscribing the interstate travel in furtherance of an unlawful activity is the situation which arose in Hot Springs, Ark., in 1960. A printing company in Jefferson Parish, La., receives race wire information from Chicago bookmakers and disseminates this data to gambling establishments in sections of the South and Southwest. This establishment is owned by a racketeer, since deported, and his race service manager, of New Orleans. This individual manager traveled up to Hot Springs in March of 1960 and got into a violent argument with the owner of the race wire service there. The Hot Springs man told the New Orleans man to stay in New Orleans as he could operate his business without help.

In May of 1960, the owner of the Hot Springs service traveled to Chicago and visited a Chicago rackets overlord. The Hot Springs man sought assistance in curtailing the activities of the New Orleans group in seeking to take over his race wire service. If we could show the existence of race wire services in New Orleans and Hot Springs and the travel on the part of the New Orleans man to expand the New Orleans service and the travel of the Hot Springs man to protect his interest in the Hot Springs service we could prosecute both of these top racketeers with the enactment of the proposed bill.

A race wire service has been provided in Wisconsin by Chicago hoodlums. In return for allowing the race wire service to prosper in Wisconsin, a person, who is now the subject of intensive investigations, has been allocated a portion of Antioch, Ill., for the conduct of gambling. This individual apparently has trained his housemen at Kenosha, Wis., before they traveled to Antioch to run the gambling operations. Such travel as by the Chicago people to Kenosha and the Kenosha hoodlums to Antioch would violate the bill as travel to promote an unlawful business, thus permitting the interruption if not the destruction of the gambling empires.

There is wide-open gambling in Newport, Ky., adjacent to Cincinnati, Ohio, and Covington, Ky. A review of the financial statements of 4 Newport gambling casinos in 1957 revealed that 11 persons, who reside outside of Kentucky, participated in the casino profits. With this bill we would be able to move against interstate travel to distribute the profits of these casinos to the out-of-State owners.

Edward Silver, the district attorney of Kings County, testified before the New York State Commission of Investigation that there have been several unsolved gangland homicides connected with

gambling in recent years in his jurisdiction. It would be in keeping with past practices of this element if the perpetrators of the crimes had come from out of State. This practice was amply illustrated by the disclosures in the trial of the members of the notorious "Murder, Inc."

None of the activities of which I have just spoken, that is, interstate travel to carry on a racketeering enterprise, travel to deliver the profits of an illegal enterprise, or travel to commit a crime of violence and furtherance of the activities of an illegal business is now per se, a violation of State or Federal law. The travel is performed by these persons with impunity, but because of that travel and the interstate aspects of the activities, the task of the local law enforcement officials is staggering.

I am not now discussing isolated instances, Mr. Chairman, but what we have found to be a pattern of behavior in a number of geographic areas.

We have skirted the area of social gambling by limiting the proposed statute to gambling, as a business, which violates State or Federal law. In this limited aspect, the enactment of the bill will be a tremendous tool for stamping out the vicious and dangerous criminal combinations.

Mr. Chairman, this bill is vital. We need it. Local law enforcement officials need it. The country needs it.

The second bill I wish to discuss, H.R. 7039, amends chapter 50 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information. Its purpose is to assist the various States in enforcement of their laws pertaining to gambling and bookmaking. It would prohibit the use of wire communication facilities for the transmission of certain gambling information in interstate and foreign commerce.

Gambling in the United States, we estimate involves about 70,000 persons and a gross volume of \$7 billion, annually.

The most diligent efforts of local law enforcement officers are often frustrated by the ease with which information essential to gambling operations can be disseminated in interstate commerce.

Bookmaking bases its operations upon races at about 20 major race-tracks throughout the country, and requires rapid transmission of the results on each race. Usually there are only a few tracks in operation at any given time and the average bet placed with a bookmaker is a small one.

In order to run a successful book that pays a good return, the bookmaker needs a volume of business. This volume is usually obtained by the fact that bettors can play their money and any winnings upon the whole card of daily races reported from one or more tracks, if they know their standing from race to race. Thus, information almost simultaneously transmitted prior to, during, and immediately after each race on such items as the starting horses, scratches of entries, probable winners, betting odds, results and the prices paid, is essential to both the bookmaker and his clientele in order to insure any sizable gambling.

Furthermore, let me emphasize that no matter by what means the bookmaker and his clients receive this inbound information—whether by telegraph ticker tape, by telephone, or even by radio or television broadcast—the bookmaker needs a means of rapid outbound communi-

cation. This usually is by telephone—with other bookmakers. The purpose is to balance his book and protect against a severe loss when the betting becomes heavy on any particular entry. I have explained this hedging process, known as layoff betting, in my earlier testimony on the interstate travel bill.

The rapid gathering and dissemination of trackside information is a highly profitable and integral part of commercialized gambling on horseracing. This information can be obtained by stealth and use of various ingenious devices, such as the "pitch-catcher" type operation where a man at the track flashes the result of a race by a hand signal, or other device, to a confederate at an open telephone line. The confederate then gives the result to a central point of dissemination. The information is placed upon leased telegraph circuits or long distance telephone lines running to the major cities of the country from which it is further fanned out on other leased circuits or telephone lines, or in some cases by radio broadcast, to the ultimate subscribers, the bookmakers, who pay a substantial fee for this vital service.

The rapid results provided by this wire service are indispensable to all bookmakers operating on any but the most modest scale. They are a means of expanding the play and stimulating further betting from race to race. They protect the bookmaker from the dilemma of either refusing bets which are placed about the time a race is scheduled to start, or of accepting a bet on a horse which has already won the race.

Equally essential to the bookmaker is the local telephone service which he must have to void the risk of arrest for running an open betting room. He needs the telephone to take a substantial portion of bets; and, of course, the bettors also will use the phone to be informed of the results. Furthermore, telephones provide auxiliary service for rapid results where telegraph tickers or speaker circuits fail. In areas where ticker or speaker service is not available, the bookmaker must have at least one telephone for the exclusive purpose of receiving service from the subdistributor who supplies him with the trackside information.

In addition to the unique transmission situation in the field of commercialized horserace betting, the gamblers also have moved into large-scale betting operations of such amateur and professional sports events as baseball, basketball, football, and boxing.

This has been highlighted recently by disclosures that for the second time in 10 years, gamblers have bribed college basketball players to shave points on games. In this situation the bookmaker needs telephone communication to get the latest "line" on the contest. This is the handicapped prediction of the probable results and the point spread in basketball and football. Without the latest information as to the condition of the team, and the happening of such things as late injuries to key players, the bookmaker is the victim of fate. He cannot permit this to happen, so he subscribes to a service which gives him and his confederates the latest up-to-the-minute information which may bear on the result.

It is quite evident that modern, organized, commercial gambling operations are so completely intertwined with the Nation's communications systems that denial of their use to the gambling fraternity would be a mortal blow to their operations.

This is the precise purpose of the proposed legislation. It would be an exercise by the Congress of its plenary power over interstate communications to aid the States in coping with organized gambling, by denying the use of interstate communication facilities for such activities.

It cannot be overemphasized that this bill is designed, first to assist the States and territories in the enforcement of their laws pertaining to gambling and like offenses. Second, the bill would in that regard help suppress "organized" gambling by prohibiting the use of wire communications for the transmission of gambling information in interstate and foreign commerce.

The word "organized" is quoted because it should be clear that the Federal Government is not undertaking the almost impossible task of dealing with all the many forms of casual or social wagering which so often may be effected over communication facilities. It is not intended that the act should prevent a social wager between friends by telephone. This legislation can be a most effective weapon in dealing with one of the major factors of organized crime in this country without invading the privacy of the home or outraging the sensibilities of our people in matters of personal inclinations and morals.

The next bill I would discuss is one we sent to the Congress, but which has not yet been introduced in the House. At this time, I would like to speak in support of subsections (a) and (b) of our draft. Subsection (c), dealing with false and misleading information, will be presented as a separate bill. The bill would amend chapter 73 of title 18, United States Code, dealing with the obstruction of justice. Its purpose is to prohibit the intimidation of witnesses in administrative investigations.

The CHAIRMAN. May I interrupt? Are you going to send an executive communication with reference—up to us—in reference to subdivision C?

Mr. KENNEDY. I am, Mr. Chairman. You wrote me a letter and expressed some concern in connection with section C. I will be glad to discuss that while I am here today. I would like to have this committee at this time—until that comes—to consider just sections A and B; then we will send up a separate communication for section C.

The need for this legislation stems from the language of the existing obstruction-of-justice statutes 1503 and 1505, title 18, United States Code, which prohibit the intimidation of witnesses in matters pending before a court or an administrative agency. Section 1503 prohibits the intimidation of any witness in any proceeding pending before any department or agency.

Section 1503 has been construed in *United States v. Scoratow* as not applying to the intimidation of a witness in an investigation by the Federal Bureau of Investigation, until a complaint is pending in a court. As so construed, the section leaves a gap in the law which permits the intimidation of witnesses in a preliminary investigation. This withholds sanctions against persons who may by their actions forestall the commencement of criminal proceedings in the Federal courts. The gap was recognized in the 85th Congress and remedial legislation was recommended by the Senate Subcommittee on Improvements in the Federal Criminal Code.

You will, of course, understand that in very many cases investigations are conducted in order to ascertain whether a complaint should

be filed or a matter referred to a grand jury. If this preliminary investigation is frustrated by the intimidation of witnesses, the investigation may be brought to a halt before evidence sufficient to warrant the filing of a complaint or the referral of the evidence to a grand jury has been ascertained. Intimidation at this point therefore is more effective than it would be at a later point when there may be other evidence upon which to proceed.

Some examples of this intimidation are as follows. In the *Scoradow* case, the defendant threatened to kill a Mr. and Mrs. Friedman if Friedman gave any information to the FBI. Friedman was being interrogated by the FBI in an investigation of a possible false statement to the FHA involving a nephew of Scoradow. The court held that such intimidation was not within the purview of existing obstruction of justice statutes and dismissed an indictment against Scoradow.

Another case such as this involved a man named Lloyd Scuttles. Scuttles has been interviewed in connection with a stolen automobile. When the man who sold Scuttles the automobile got out of prison, he threatened to kill Scuttles because he believed that Scuttles had given the FBI information leading to his conviction. Scuttles was never a witness at the trial of the man who threatened him. Therefore the case was not within the purview of the obstruction of justice statute.

In still another case, a man who had been interviewed by FBI agents in a white slave case was accosted by another man who displayed a knife and threatened to kill our witness if he gave any information to the FBI, or the police. Again, since the man threatened was not a witness in a proceeding, no action could be taken against the threatener.

These are some of the cases we know about. We don't know, of course, the number of cases where the intimidation has been wholly effective.

We are asking for an expansion of the obstruction statutes to cover this situation. It is particularly necessary in view of the other bills I am discussing today.

If those bills are enacted, the Department of Justice is going to be involved in large-scale combat with the forces which use interstate commerce to conduct their criminal activities. The persons who make up this element are tough and ruthless. They also are shrewd enough to be aware of the need of secrecy in the conduct of their activities. They know the dangers to which they will be subjected if witnesses talk freely to our investigators. Therefore, we expect attempts will be made to mislead us through intimidation of witnesses by threats or by violence.

I am sure that the gap of which I spoke previously is known to the leaders of organized crime. They are made well aware of the laws' limitations and the opportunities for forestalling investigations. This loophole permits the use of threats and violence in the first stages of an investigation, thus preventing the development of a case.

Our opponents are ruthless, vicious, and resourceful. I cannot stress this too much. They will use every weapon at their command to prevent our discovery of incriminating information. The present state of the law is an open invitation to them to cripple our efforts and prevent our inquiries at the very point where witnesses need protection the most.

The need for this bill seems to me to be self-evident.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt there. I am sure the Attorney General will be happy to know that our colleague, Mr. Cramer, on May 9 introduced H.R. 6909. Title 10 of the bill will implement this particular recommendation.

Mr. KENNEDY. Thank you, Congressman.

Mr. CRAMER. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Mr. Cramer?

Mr. CRAMER. Incidentally, title 10, as introduced in this bill, does include subsection (a) and (b), and not subsection (c) for the obvious reason of the reservations that have been expressed already relating to false information. Likewise, title 10 was limited in H.R. 6909, which is in the form of an omnibus anticrime bill known as the Antiracketeering Act of 1961. It is limited to investigations related to the act as perhaps a starter to determine the validity of this approach.

Mr. KENNEDY. May I continue, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. KENNEDY. The next bills are H.R. 468 and H.R. 3023 to amend the Fugitive Felon Act. They are identical. This amendment was introduced in the 86th Congress at the behest of my predecessor as H.R. 11897. It passed the House on August 23, 1960, but no action was taken on it in the Senate. It was again introduced at the beginning of this session of the Congress at Mr. Rogers' recommendation. I endorse this proposal and urge its enactment.

The purpose of this proposal is to expand the coverage of the Fugitive Felon Act (18 U.S.C. 1073) which now makes it a Federal offense to flee a State jurisdiction in order to avoid prosecution or confinement for certain crimes of violence. These crimes include murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, arson punishable as a felony, extortion accompanied by threats of violence, or attempts to commit those offenses.

Although the law only applies to fugitives who have committed these crimes, this section has been extremely useful in strengthening local law enforcement. It has enabled the FBI to arrest fugitives fleeing a State jurisdiction and turn them over to the State in which they are arrested to await extradition by the demanding State. In 1960 the FBI apprehended 1,361 fugitives under the provisions of this law. Only two were tried in Federal courts. The rest were turned over to local authorities.

We can understand the limited scope of the section if we go back to the time of its enactment in 1934. Local law enforcement officials were troubled then, as they are today, with the ease with which fugitives could escape their jurisdiction by crossing a State line. The local officials could not follow, find, and return the criminals. It became apparent that the Federal Government had to assist those officials by apprehending fugitives in other jurisdictions and returning them for prosecution.

The nature of the publicized crime of that area was, however, different than it is today. At that time, the Congress and the public were greatly disturbed by widespread crimes of violence. Names like Capone, Dutch Shultz, Mad-dog Coll, Dillinger, and Karpis were on the front pages of the newspapers of the country.

Today, as in 1934, the major responsibility for the combating of crime and the prosecution of offenders rests with the States. Today, however, the face of organized crime has changed. While there still

are crimes of violence, the modern criminal has become somewhat more sophisticated in the planning and perpetration of his activities in gambling, prostitution, narcotics, bribery, fraud, and larceny. He has moved into legitimate businesses and labor unions where he embezzles the funds and loots the treasury.

He has much more rapid means of escape from the jurisdiction of the local law enforcement. Unless his offenses also are Federal offenses, the Federal Government may not, through the means of this section, enhance the power of the State officials to apprehend racketeers and hoodlums.

If the Fugitive Felon Act is expanded, as proposed by this bill, the FBI will be able to put into operation the first of the necessary steps leading to the return to the proper jurisdiction of any person who has committed a crime punishable by death or imprisonment for more than 1 year. In such an expanded scope, we in the Federal Government can be of the greatest aid and assistance to the States.

Another area of gambling which needs attention, if we are to make a coordinated and successful attack on organized crime, is the easy interstate transportation of wagering paraphernalia. This was highlighted by the report of the Texas Commission mentioned in my earlier testimony. That problem is the subject of H.R. 6571.

Federal laws, designed to suppress the lottery traffic in interstate and foreign commerce, have been on the books since 1895. The present statutes are found at 18 U.S.C., sections 1301 to 1305. In summary, these statutes make illegal the transportation in interstate or foreign commerce of—

any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery \* \* \* (18 U.S.C. 1301).

From the very beginning the courts narrowly have limited the scope of these statutes. In 1897, the Supreme Court held that the statutory proscription against interstate transportation of lottery paraphernalia applied only to writings, instruments, or tickets representing chances on an existing lottery and not an already completed one (*France v. United States* (164 U.S. 676 (1897))). The 1903 decision in *Francis v. United States* (188 U.S. 375 (1903)), further limited the scope of the statute by holding that a duplicate slip, retained by the agent of a numbers lottery to indicate the number played, is not a paper "purporting to be or to represent a chance, share, or interest in a lottery." I have previously told you of the shipment of the plates for printing numbers tickets. That shipment will violate this section, whereas the travel to deliver the plates will also violate our travel proposal. Formerly, these would not be covered by the law.

Finally, it has been held that the use of the mails in advertising and conducting a bookmaking business does not violate the present statutes because the selection of winners may require some skill or knowledge rather than mere chance. *United States v. Rich* (90 F. Supp. 624 (E.D. Ill. 1950)).

Since the classic definition of a lottery is the payment of consideration for a prize to be awarded by chance, this interpretation excludes sports betting slips from the existing statutory prohibition against interstate transportation.

The proposed statute is designed to close the most important loopholes resulting from the above decisions. This measure would make it a felony to send, or knowingly carry in interstate or foreign commerce, any wagering paraphernalia or device used, adapted, or designed for use in bookmaking, wagering pools with respect to a sporting event, or numbers, policy, bolita, or similar games. This language makes clear its applicability to slips, papers, or paraphernalia which may be used in a lottery scheme not yet in existence or already completed. It also specifically prohibits the interstate transportation of slips recording the amounts and numbers bet in a numbers lottery and betting slips and other materials of a bookmaking operation.

The CHAIRMAN. What is bolita?

Mr. CRAMER. It is the numbers racket.

Mr. KENNEDY. It is like the numbers game, Mr. Chairman. I have no personal knowledge of it, but I have been told.

Mr. CRAMER. I would like to disclaim personal knowledge as well, Mr. Chairman.

Mr. KENNEDY. It is a form of the numbers operation, Mr. Chairman.

In addition to the example I have previously cited, there is considerable evidence that the operators of certain types of lotteries—which are undeniably interstate in character—have adopted various ways to avoid violating the narrow prohibitions of existing law. For example, lottery tickets may be printed in blank at a central point in one State, then transported to other States where the so-called playing numbers are overprinted. Without these numbers the blanks are not within the statutory definition of lottery tickets and their interstate transportation is not prohibited. Under the proposed measure, the blank tickets would be prohibited from interstate shipment as paper designed for use in a numbers or similar game.

The so-called numbers lottery, or one of its infinite variations, operates in virtually every major metropolitan area. Particularly where such a metropolitan area covers parts of several States, it is not unusual that the numbers sellers in one State turn over their play to runners who report at a numbers bank in another State. The interstate carrying of slips or writings, indicating the amounts of bets and the numbers played, is essential to this type of operation. The proposed statute would prohibit the interstate carrying of such numbers slips.

The fear of a raid by Federal or local police has turned the attention of the numbers operators and the bookmakers to the problem of quick disposition of the records used in the conduct of the business. This would include the papers used to record the bets or the numbers played by the individual bettor. The operators are making our task more difficult through the use of flash paper for the quick disposition of the records. This paper is highly flammable and will burst into flame if a cigarette is placed on it. In less time than it will take a law enforcement officer to cross the room, a bookmaker can turn his records into a pile of ashes of no use as evidence against him.

We wish to curtail the interstate transportation of this type of equipment. If we do so, the bookmaker and numbers operator is going to find another specialized type of equipment to frustrate our efforts. We thus are asking for this bill to curtail the interstate shipment of paraphernalia that is used, intended or designed for use in

their activities. With this broad prohibition we hope to be able to keep step with the criminal element as it tries a different approach to the problem.

The last bill I will comment upon is H.R. 3021, which would amend chapter 95 of title 18, United States Code, to permit the compelling of testimony under certain conditions and the granting of immunity from prosecution in connection therewith. This proposal was first submitted to the Congress on May 25, 1959, by my predecessor. The bill was introduced as H.R. 7392, but did not pass. In our examination of the program submitted by the previous administration, we found that the bill will perform a necessary function and I recommend its enactment.

The experience of the Department has shown that there are difficulties in obtaining proof of violation of the Taft-Hartley Act and the Hobbs Act because certain portions of those acts overlap. For example, an employer may have been the victim of labor extortion which is prohibited by the Hobbs Act. However, because he has made payments to the labor racketeer he may fear that the payments will be construed by prosecutive agencies or a grand jury as a payment to the labor leader in violation of the Taft-Hartley Act. Thus the employer understandably is reluctant to testify about transactions that are not clear-cut violations of the Hobbs Act. In this gray area of activity our difficulties in obtaining proof are substantial.

This proposal will permit us to call the businessman before the grand jury and compel him to testify as to the transactions. If he first refuses to answer the questions on the basis of his constitutional privilege he could be given immunity against prosecution for any matter, thing, or transaction about which his testimony is compelled.

We will then be able to obtain the evidence we need against the person who is most culpable in the matter, while relieving the fears of the person who has been wronged.

In addition, in Hobbs Act violations we very often run into a situation where a person is a conduit for funds from an employer to a labor racketeer. The conduit, while not the most culpable person involved, is nevertheless able to and under the present law justified in refusing to answer any questions about the transaction on the basis of his constitutional privilege. If the present bill is enacted, we will be able to require testimony from the least culpable of the conspirators and obtain the proof we need for conviction of the real offenders.

In summary, this bill will enable the Department to prosecute with more effectiveness the persons engaged in labor racketeering which is tied into the rest of organized crime and has become such a blight upon the business community.

Mr. Chairman, in conclusion, I would like to read into the record the comments of Mr. J. Edgar Hoover, Director of the FBI, about the bills I have discussed. Mr. Hoover's statement is as follows:

Your legislative program as to interstate crime currently pending in Congress should receive the wholehearted endorsement of law enforcement at Federal, State, and local levels. As we are all aware, the growing seriousness of the Nation's crime problem presents an increasing threat to the safety and welfare of the Nation. Today its severe effects are felt directly or indirectly in every home in America. In terms of dollars and cents alone crime imposes a tremendous burden upon us all. Our annual cost of crime now totals \$22 billion—the equivalent of \$128 for every man, woman, and child in these United States.

One of the most deeply entrenched segments of crime is represented in the underworld activities of racketeers and professional hoodlums. I refer to the

vice barons, those engaged in illegal gambling, commercialized prostitution and illicit liquor operations as well as the narcotics peddlers and the strong-arm racketeers whose lucrative illicit profits are derived from every stratum of our society. Many of these racketeers utilize interstate facilities and operate with impunity, if not in open defiance.

The ranks of law enforcement are closing against the challenge of hoodlum lawlessness. As an example, on a day-to-day basis the FBI exchanges information with other law enforcement agencies at the local, State, and Federal levels concerning the operations and activities of professional hoodlums. During the past 6 months the FBI has disseminated over 53,000 items of a criminal intelligence nature to other law-enforcing authorities.

In addition, the scientific facilities of our laboratory and the fingerprint services of our Identification Division have been fully available to all agencies which are joined in the fight against crime. In return the FBI received invaluable assistance throughout the year from other members of the law enforcement profession in all parts of the Nation.

These important weapons, science and cooperation, are successfully meeting the hoodlum challenge of lawlessness every day in the areas where we are now empowered by law to use them. These can be made even more effective if the law enforcement profession is given authority to bring these facilities to bear on those present volds in the law which allow organized crime and racketeering to operate on an interstate basis.

This new and vitally needed legislation, which you have proposed, will strengthen the Federal Government's hand and will provide it with additional effective weapons in stamping out the evil of organized crime. If enacted into law, these legislative proposals would certainly enable the Government to proceed more effectively and vigorously against the well entrenched interstate racketeers who are beyond the reach of local law enforcement.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Attorney General, I notice you have included in your statement the remarks of the head of the FBI—Mr. J. Edgar Hoover. I wish to state that we requested Mr. Hoover to appear before the committee to give us the benefit of his counsel and advice, particularly on enforcement of these proposed statutes.

Mr. Hoover said since it was a legislative matter he felt it best not to testify. Is there any reason why Mr. Hoover should not appear before us to give us the benefit of his very expansive experience on these matters and give us some idea of the policy of the Department concerning these important matters?

Mr. KENNEDY. Mr. Chairman, traditionally the Federal Bureau of Investigation has stayed away from policy questions and left that up to the Department of Justice. I have discussed this matter with Mr. Hoover. I think he believes this is a policy question and that it should be left to the spokesman for the Department of Justice rather than the Federal Bureau of Investigation.

I think that is the position he has taken traditionally on all of these matters. These bills, prior to the time they were sent to you, were all discussed in full with him. I believe, as he put in his statement, he supports them. I think beyond that he would feel that all statements should emanate from the Department of Justice.

The CHAIRMAN. May I make this statement in that connection? I just returned from a seminar on sentencing conducted by the judges of the fifth judicial circuit in New Orleans. A representative of the FBI appeared and made statements concerning policy. That seems to be inconsistent with the attitude that Mr. Hoover has taken, and in which you concur now, as to his appearance before this committee.

If they can appear before seminars of the judicial conferences, I don't see why we can't have the benefit of Mr. Hoover's counsel and advice on these momentous matters.

Mr. KENNEDY. Mr. Chairman, they have not attended those kinds of conferences in the past either. I received a letter in connection with that, and I asked specifically that they send a representative to attend this meeting, which you also attended.

This is a terribly important area. The disparity of sentences across the United States has really become a shocking situation. We are devoting a good deal of time and attention to it in the Department of Justice.

I asked in this particular instance that the Federal Bureau of Investigation make a representative available. I think that that was slightly different from this, primarily because that was of help and assistance to the States.

The CHAIRMAN. I don't want to belabor the thing. The gentleman at New Orleans went beyond the question of the disparity in sentences and took in the question of mandatory and minimum sentences, and declared something in the nature of policy. I was rather surprised that we have this attitude from Mr. Hoover that he felt it would be better not to appear before this committee. I do hope that that attitude can be changed so we may question Mr. Hoover about the many pressing problems that arise concerning the enforcement of these proposed statutes.

So I hope that the Department can reconsider that matter.

Mr. KENNEDY. Thank you, Mr. Chairman.

The CHAIRMAN. Do you care if I go over these bills somewhat?

Mr. KENNEDY. That would be fine.

The CHAIRMAN. On the first bill—

Mr. HOLTZMAN. May we have the numbers, Mr. Chairman?

The CHAIRMAN. 6572—I want to state the questions that are propounded by us do not indicate that we are opposed to the bills.

Mr. KENNEDY. I understand.

The CHAIRMAN. I offered the bill myself and am in favor of it. But I would like to get some interpretation from you on H.R. 6572, which is the one concerning public travel in aid of racketeering enterprises.

As you know, the courts have long held that the words in a criminal statute must be clear enough to enable the average man to know what he can or cannot do. The words should not be vague; otherwise there would not be due process. My questions are more or less directed to you on that score.

For example, what would be meant on page 2, line 3, by the word "promote" or by the words "manage" or "facilitates"? What does that mean? Are they definite enough, or should we develop some other language to "nail that down"?

Will the average man know what that means so that he could be guided as to what he should or should not do? Mind you, I am in favor of the bill and I want the bill to pass. But I want to be sure that it is impervious to judicial attack.

Mr. KENNEDY. I understand. It seems to me that they are words commonly understood by the laymen—"promote, manage, establish, carry on, or facilitate." I wouldn't imagine there would be any great difficulty in that, Mr. Chairman.

The CHAIRMAN. How do you define the word "otherwise" on page 2, line 3—"otherwise promote"? Is that intended to mean anything specific? Perhaps you would want to give some more study to it.

Mr. McCULLOCH. I think, Mr. Chairman, I would like to ask counsel whether that is a phrase of art or whether it is used in other—

Mr. KENNEDY. I think ordinarily that is a phrase of art, and as used in this kind of bills in dealing—

The CHAIRMAN. I think it may be deemed words of art. We will check a bit further ourselves. You might have your staff do likewise.

Mr. KENNEDY. We will be glad to. If there is specific wording that needs definition, rather than for me to try to give it off the top of my head here, where it is so important, Mr. Chairman, we could give a definition as we visualize it at the Department of Justice.

The CHAIRMAN. You have other words there which leave some doubt. On page 2, line 5: "unlawful activity."

Mr. HOLTZMAN. "Any unlawful activity."

The CHAIRMAN. "Any unlawful activity."

Mr. KENNEDY. Of course I think that is the most difficult part. That is why we went to some pains to identify and describe what unlawful activity is. It seems to me the rest of the language can be understood. Unlawful activity gets into an area of some difficulty. So we put down here:

As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States.

That limits it to a very great degree, Mr. Chairman.

The CHAIRMAN. We must always envision the possibilities of the effect of the words. The word "prostitution" is mentioned on line 11. Suppose a man in Washington goes with his girl over the State line into Virginia and fornication is committed. What would happen to them under those circumstances?

Mr. KENNEDY. You have that problem already, Mr. Chairman. That is always a problem, where you are carrying on here in the city of Washington. We are not devoting all of our time to finding out what is going on in the evenings in that area.

The CHAIRMAN. Would that individual be guilty of a violation of this act? I see you make the crossing of a State line a crime by itself.

Mr. KENNEDY. We are relying on the good judgment of law enforcement officials, Mr. Chairman, just as the Congress did when they passed the Mann Act.

The CHAIRMAN. As I understand, this bill prohibits the travel where something unlawful is done in a State. I gave you this illustration of a couple in Washington who have no intention probably of doing anything wrong, but get over in Virginia and do the wrong. Are they going to be hailed before the Federal court for the violation of this act?

Mr. KENNEDY. No; they won't, Mr. Chairman.

The CHAIRMAN. Why not?

Mr. KENNEDY. Any more than they have been hailed before the court at the present time under the Mann Act.

The CHAIRMAN. But if that particular act that I mentioned is a violation of the State of Virginia or some other State, then they would be in that trouble.

Mr. KENNEDY. We have the authority to do it, Mr. Chairman, but we don't intend to.

The CHAIRMAN. What is a business enterprise?

Mr. KENNEDY. Business enterprise is defined here. We have limited it in a number of different areas. The unlawful activity is just the business enterprise involving gambling, liquor and narcotics—just those three offenses. Then beyond that, where we have prostitution, it goes on and says specifically prostitution offenses in violation of the laws of the State in which they are committed.

In the situation which you pose, Mr. Chairman, there would be no violation of this proposal. In order to have a violation there must be travel to promote an unlawful activity. The unlawful activity is further defined as a business enterprise and since we are defining an unlawful activity it is implicit in the definition that this is an unlawful business enterprise engaged in certain enumerated activities. We are proscribing travel in aid of unlawful business enterprises involving gambling offenses, liquor offenses, narcotics offenses, and prostitution offenses. We could not prove that the couple you mention who cross State lines for the purpose you suggest are engaged in an unlawful business enterprise involving prostitution offenses.

The CHAIRMAN. Let's take another illustration, if I may. I am not being picayunish in any sense of the word because innocent people possibly might be picked up here and held for this crime of crossing State lines for illegal transactions. Suppose I am a resident of the District of Columbia and I operate a liquor store in Baltimore. You mention liquor on page 2, line 11. The closing hour for my store is midnight.

I leave my house in the District of Columbia of a morning and I say that I am going to keep my store open until 1 a.m. I am violating the law of Maryland when I cross the line into Maryland for that purpose. As I understand it, I would be in violation of this act.

Mr. KENNEDY. It is a question of whether that is a business enterprise, unlawful activity involving a business enterprise involving gambling, liquor, or narcotics, in which they are committed in violation of the laws of a State.

I think that would be a very close question because you are operating the liquor store; you are operating it after hours, but not as a matter of course of business in violation of the law.

Mr. HOLTZMAN. Mr. Chairman, on that point, may I ask a question? Mr. Attorney General, I don't think that is the kind of thing that the Department of Justice is interested in—a specific event of that kind. Therefore, I think we would have to further refine the language to make it crystal clear because this kind of language does leave the door open to exactly the situation the chairman pointed out.

I know that is not what the Department of Justice is aiming at.

Mr. KENNEDY. I would say there, Congressman, as I said at the beginning, that there are dozens of laws on the books—including again the example that the chairman used of the question of somebody transporting a girl from Washington into the State of Virginia. That is already a violation of the law. Those people are not being prosecuted.

You have got gambling laws in local areas where people are carrying on betting within their homes which might technically be a violation of the law. But those people aren't being prosecuted.

The CHAIRMAN. It is true it may be unlawful already, but you add another crime. You make traveling a crime in and of itself. They may be acquitted of the crime of fornication in that State—

Mr. KENNEDY. Under the Mann Act, Mr. Chairman, it is already a crime to transport a girl across the State line. That doesn't add anything to what this does.

The CHAIRMAN. Take the case of the liquor store, which is a business activity. As I say, he crosses that State line with the intention of keeping that business open 1 hour beyond the legal limit. I think they would run afoul of the statute.

Mr. KENNEDY. I don't believe he would, Mr. Chairman. As I say, the Department of Justice, or law enforcement people, are going to have to use and always have to use every day, every hour, some discretion. This is not aimed toward that purpose.

The CHAIRMAN. I know, but you have to have a standard or criterion to govern the Department. Congress must lay that down so that your limits may be properly defined as to how far you could go and how far you can count on going. I don't want to belabor it.

Mr. KENNEDY. Our intention, as I said in my statement, is to try to help and assist local law enforcement. If this language can be refined in a better fashion than we have, then certainly we would welcome it. I think it is difficult, and I think that obviously when you get into a bill such as this, you are going to get into areas where some discretion is going to be necessary.

The Federal Government, I think, has used discretion in the past in matters such as this—again including the example that you gave, including the fact that in many States gambling is illegal; yet people in their own homes are playing cards and betting.

You don't have law enforcement people who are coming by and ringing the doorbell and arresting them. That kind of thing is not going on because that is not the intention of the statute. The same thing is true here. If you can refine it, Mr. Chairman, I welcome it.

The CHAIRMAN. I am thoroughly in sympathy with what you are trying to do, but I want to be sure to get this language exact so we won't be confronted with a lack of due process.

Mr. KENNEDY. I think what you and Congressman Holtzman have been talking about is a problem area. It seems to me that, based on the history of statutes that have been enacted in the past, this can be administered properly.

The CHAIRMAN. I think we can wrestle with this and come up with proper language.

Mr. CRAMER. Mr. Chairman?

The CHAIRMAN. Mr. Cramer?

Mr. CRAMER. On that point, page 29 of 6909 which I introduced, and other bills which I previously introduced, contains a definition which the subcommittee may wish to give some consideration to. It was used because of similar reservations which I had at the time these bills were drafted.

The definition is of "syndicated criminal activities." Such activities are described as "substantial concerted activities in or affecting interstate and foreign commerce when any part of such activities involve violations of law, Federal or non-Federal," which I think gives the subcommittee something as an alternative to consider that would perhaps avoid some of the pitfalls that have been suggested.

Mr. Stratton likewise, in the bill he introduced—which I think was picked up from the bill I introduced early in 1959 on this same subject matter of traveling in interstate commerce—uses a similar defini-

tion. So I think perhaps something along those lines might be considered by the subcommittee.

Mr. McCULLOCH. Mr. Chairman, in due course we will have the advice and help of your Mr. Miller, the Chief of the Criminal Section, in defining words and getting to the real heart of this, will we not?

Mr. KENNEDY. We would like to work closely with you on that. I might say, Mr. Chairman, that what you mention about the problem here is also going to be a problem in the bill dealing with the transportation of wagering paraphernalia, because here we have said that it has to be part of a business enterprise—the transportation of wagering paraphernalia. Again that is going to be largely dependent upon the discretion and the good judgment of law enforcement officials because it is just the transportation.

Therefore, an individual who is carrying a wagering card or a baseball card or a basketball card across State lines is liable for prosecution.

The CHAIRMAN. Let us go to H.R. 7039, which concerns the transmission of bets, wagers, and gambling information.

Mr. KENNEDY. Which one?

The CHAIRMAN. H.R. 7039. There you exempt newspapers and information on wagers and racetrack information that may be conveyed by news reporting and other media of communication. I refer to page 2, line 14: "Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests."

I take it that would not prevent papers like the Morning Telegraph or the Armstrong publications from publishing the latest trackside information. Let us take this case. This is just for the purpose of bringing out and clarifying what this all means.

Let's say the Preakness is running this coming Saturday. On Saturday morning, the day of the race, early in the morning, a jockey is injured. He is riding a certain horse in that race. Another jockey is substituted. That is valuable information to the bookmakers.

If that information is conveyed, say, by telephone, telautograph, or Western Union, that might very well violate the statute. But if the 11 o'clock edition of the Washington Post contained that same information which is of value to bookmakers, it would be no violation.

Mr. KENNEDY. That's right.

The CHAIRMAN. How do you reconcile that?

Mr. KENNEDY. Again I don't think you can have a perfect law. As I said in my statement, the great problem for those involved in this business is instantaneous information. They cannot rely on the fact that this information is going to appear in time in the Washington Post. They are going to, and have, set up other facilities in order to obtain information.

If we have the enactment of this law, this will seriously curtail their activities.

The CHAIRMAN. What burden do you place upon the telephone company? Let's say, for example, that I ask the telephone company to install six or seven outlets, and they don't know what I am using it for. They may think it is a normal installation, but I am using it for receiving information on betting at racetracks or other sporting events.

Is any burden placed upon the telephone company?

Mr. KENNEDY. No. They have to have the information, Mr. Chairman.

The CHAIRMAN. I beg your pardon?

Mr. KENNEDY. They have to have knowledge of the information. They have to have knowledge of what is going on. We feel that in many instances this information will come to their attention, because those telephones are going to have to be serviced. When the information comes to their attention, and they intentionally furnish or maintain the equipment, then they are going to be held responsible. But until they have information, the burden is not on them. The burden of proof is on us.

Mr. McCULLOCH. Mr. Chairman, I would like to ask a question there. Would it be necessary to legalize wiretapping for this provision of this bill to be effective?

Mr. KENNEDY. No, it would not, Congressman. There are a number of other ways in which you can obtain the information. We have other methods other than through wiretapping—through informants; through examination of telephone company records; through employees who work for telephone companies; through those who take messages back and forth.

There are a number of ways in which we can handle it.

Mr. HOLTZMAN. Mr. Chairman, I might say that the telephone companies have been very constant in their own desire to stop this. I trust we won't get into wiretapping today, because we have enough trouble as it is.

Mr. KENNEDY. Yes, we do.

The CHAIRMAN. Do you include the conveyance of this trackside information by TV as a violation?

Mr. KENNEDY. No.

The CHAIRMAN. You do provide on page 1:

The term "wire communication facility" means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, and delivery of communications) used or useful in the transmission of writing, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

Is it possible to include television in that?

Mr. KENNEDY. We mean to exclude radio and television, Mr. Chairman.

The CHAIRMAN. Mr. Foley wants to ask a question.

Mr. FOLEY. Mr. Attorney General, in that regard, if you exclude radio, you recall from your own experience what happened in Jefferson Parish, La., where the Marcello brothers had a shortwave radio to service their jukebox service, but they were using it to disseminate racing information for gambling purposes.

Mr. KENNEDY. That's right; yes.

Mr. FOLEY. Why is radio excluded?

Mr. KENNEDY. Because the Federal Communications Commission already has the authority, and they weren't meeting their responsibilities. They can already handle the situation.

Mr. FOLEY. You rely wholly on the FCC to enforce the radio or TV provision?

Mr. KENNEDY. That is correct. I think they have ample authority; and if they meet their responsibilities, I don't see that there is any problem.

Mr. FOLEY. Then, if that Marcello operation was repeated and this bill was enacted, that Marcello operation wouldn't be a violation of this section, would it?

Mr. KENNEDY. That is correct.

Mr. FOLEY. Do you see any reason to justify that?

Mr. KENNEDY. I just think you get into a lot of complicated areas when you bring in radio and television. The transmission of racing results in the regular course of their news—I think it poses a lot of difficulty. As I say, the FCC has the authority.

After we exposed that about Carlos Marcello, they did indict the Marcello brothers and a number of others who were involved in that. Although no conviction was obtained, it did show that they had the authority to move ahead.

We have had discussions with the FCC and they say they are ready and able and willing to handle this area. I would rather stay away from it ourselves.

Mr. FOLEY. What about this problem, which has been an actual problem in New York, of where the bookmaker had a mobile telephone in his automobile? Is that covered here?

Mr. KENNEDY. Mobile telephone in his automobile? Yes, it would be.

Mr. FOLEY. You feel that is covered?

Mr. KENNEDY. Yes.

Mr. ROGERS. You say the FCC would deal with television?

Mr. KENNEDY. Yes.

Mr. ROGERS. And radio. Would a television camera on the tote board, for example, transmitting throughout the country that information at the time of the race not be in violation?

Mr. KENNEDY. They are going to have that information. This is not going to be all perfect. I just think that the dangers and the problems of including television and radio offset the good that it would accomplish in my estimation.

Mr. CRAMER. Mr. Chairman, may I help clarify the record?

The CHAIRMAN. Mr. Foley wants to finish first.

Mr. FOLEY. On page 2, subsection (c), lines 18 through 20, what is the purpose of that, Mr. Attorney General? There is no grant of immunity involved by the Federal Government here. Why have that subsection in there?

The CHAIRMAN. Perhaps Mr. Miller later would tender that information from the Attorney General. Is that agreeable to you?

Mr. KENNEDY. That will be fine.

The CHAIRMAN. May I turn to H.R. 468—

Mr. CRAMER. Mr. Chairman?

The CHAIRMAN. I am sorry; I beg your pardon. You go ahead, Mr. Cramer.

Mr. CRAMER. I assume you are familiar, Mr. Attorney General, with the recommendations of the American Bar Association in 1954, I believe it was, studying this specific subject matter, relating to this same transmission of gambling information through wire and telephone. They made a recommendation which I believe was embodied in Senate bill 1038, at that time on the Senate side, which places some responsibility on the telephone company, at least in the case of a direct line, to require them to, in effect, police the line or to require the user of the line to file a certificate that he doesn't intend to use it for this

purpose—that is, as defined in my bill—relative to syndicated criminal activities. I have a title on that.

Was consideration given to that approach as recommended by the American Bar Association in determining what should be recommended?

Mr. KENNEDY. Yes. I thought that it placed too much of the problem and the burden on the telephone companies and unfairly so. That is why we didn't include it in our bill.

Mr. CRAMER. You feel that even limiting it to direct-line users would still be too much of a responsibility?

Mr. KENNEDY. It seems to me that it was.

Mr. CRAMER. The bill which I introduced, which is contained in the omnibus bill, H.R. 6909, limited it to instances involving individuals who have filed gambling stamp tax or gambling stamp permit applications under existing Federal law. Is there any reason why, in those circumstances where the phone company is put on notice, there shouldn't be some responsibility to help police this syndicated crime problem?

Mr. KENNEDY. Under your bill, would the Federal Government notify the telephone companies who paid the stamp tax?

Mr. CRAMER. They would have the information available.

Mr. KENNEDY. How would they obtain the information?

Mr. CRAMER. You have to sign an affidavit with the phone company.

Mr. KENNEDY. Does that mean everybody who gets—

Mr. CRAMER. When they register for the gambling tax with the Federal Government, they would have to file an affidavit that they didn't intend to use these communications facilities for gambling purposes.

Mr. KENNEDY. I think that that is one approach. As I say, we feel that our approach—

Mr. CRAMER. There is no burden on the phone company in that instance. In other words, if an affiant lies in filing his certificate, and he is found to have lied, then he is subject to Federal criminal penalty.

Mr. KENNEDY. Does the telephone company have any responsibility whatsoever?

Mr. CRAMER. Only to the extent that they must inform the Department of Justice if they have reason to believe that a person is required by this section to register. To that extent there is some responsibility on the telephone company.

Mr. HOLTZMAN. Mr. Chairman, on that point, will you yield?

Mr. CRAMER. I would like to have his answer.

Mr. KENNEDY. Again, I think that the burden is somewhat on the telephone company. I think it is less than has been suggested in the past, Congressman. I think that our approach is better, but I wouldn't be strongly against that.

Mr. CRAMER. If he is required to file to the effect he is a gambler under the provisions of existing law, why shouldn't he also be required to file an affidavit that he doesn't intend to use the communications facilities?

Mr. KENNEDY. I don't mind that part. The only question I have is the part where then the telephone company has the responsibility and get into that area. I think that poses some difficulties.

The CHAIRMAN. Mr. Cramer, will you yield to a member of the subcommittee?

Mr. CRAMER. Yes, sir.

The CHAIRMAN. Mr. Meader.

Mr. MEADER. Mr. Attorney General, when counsel asked you about subsection (c) on page 2, lines 18, 19 and 20—

Mr. KENNEDY. What bill is this, Congressman?

Mr. MEADER. The bill we were last considering, 7039:

Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, territory, possession, or the District of Columbia.

It occurred to me that that might be an effort to deny preeminence by the Federal Government in this field. In all of these bills I would assume that no one has any intent to impair the validity of any State criminal laws with respect to gambling or narcotics or anything else.

Mr. KENNEDY. That is correct. Mr. Chairman, that is the answer we wanted to make. I appreciate that, Congressman.

Mr. MEADER. It might be wise, in view of the *Nelson* decision, to actually write in each one of these bills that the Congress does not intend to strike down any State criminal laws.

Mr. KENNEDY. And that we don't intend to preempt the field.

Mr. HOLTZMAN. Mr. Attorney General, the practice in New York is that, when the phone company is made mindful of the fact that a telephone is being used for bookmaking, you have to literally move heaven and earth to ever get a phone back. The procedure has been, in instances of doubt—unless the District Attorney joins in the application—to deny it, to deny continuance or deny a new phone.

Perhaps in the context of what Mr. Meader just said, it might be better, as you suggested, not to place any particular burden on the phone company so long as they discharge their obligations elsewhere as they do in New York.

Mr. KENNEDY. That is a good idea.

The CHAIRMAN. Mr. Attorney General, turning to H.R. 468, the Fugitive Felon Act, I will just ask one or two questions for clarification. We have, as you know, a Uniform Extradition Act. I think there are some 40-odd States that subscribe to it under reciprocity. We also have similarly in those States a Uniform Attendance of Witnesses Act.

Have those acts fallen down, do you know, so that it is difficult for one State to get a witness back into its territory for interrogation in judicial proceedings?

Mr. KENNEDY. No.

The CHAIRMAN. Have you had any difficulty with the extradition?

Mr. KENNEDY. No. Of course this wouldn't affect that, Mr. Chairman.

The CHAIRMAN. Why wouldn't it? In other words, as I understand it, this bill, in addition to murder, kidnaping, burglary, covers any crime punishable by more than a year in prison. That runs the gamut of all felonies—every felony susceptible of a prison term of 1 year or more; and even some misdemeanors. It isn't what the judge would hand out as a sentence; it is what is possible under the act. It is all-embracing.

If a man commits any one of those crimes and crosses a State line, he commits a new crime. Crossing the line is a crime. The purpose is what? Is the purpose to make more effective the extradition statutes or to bring him back to the State where the original crime was committed?

Mr. KENNEDY. It is to help and assist the States, Mr. Chairman, not to try to gain jurisdiction ourselves. It is to help and assist the States. We have facilities operating across State lines where we can locate these individuals far easier than the States can. But we return them to the States.

In the last 5 years we picked up somewhere around 5,500 individuals, and we have only prosecuted 25 of them.

The CHAIRMAN. Does that mean you have only been able to pick them up in cases of murder, kidnaping and burglary, and arson?

Mr. KENNEDY. That's right.

The CHAIRMAN. And you haven't been able to pick them up for the benefit of the States on any other crime?

Mr. KENNEDY. That's correct.

The CHAIRMAN. That is why you want to expand it to cover all felonies?

Mr. KENNEDY. That is correct, Mr. Chairman. It is not because we want the jurisdiction ourselves. But we think it would be of great help and assistance to the local law enforcement agencies.

Mr. McCULLOCH. Mr. Chairman, I would like to comment. In addition to what the Attorney General said, if this legislation becomes law, then the FBI immediately has authority to move in to assist the local authorities even in those instances where there isn't a request to do so. Isn't that the case?

Mr. KENNEDY. That is correct.

Mr. McCULLOCH. But you have no intention of pre-empting action by the States if they are able to do the job?

Mr. KENNEDY. Absolutely not.

The CHAIRMAN. I am speaking again of the possible effects. This expands immeasurably the powers of the FBI, does it not?

Mr. KENNEDY. It does. I think all these bills do.

The CHAIRMAN. It would give the FBI power to cover almost all important crimes beyond kidnapping, burglary, murder and arson.

Mr. KENNEDY. Only where they fled the jurisdiction of the State.

The CHAIRMAN. I understand. But in those cases the FBI would have a very persuasive authority. While the purpose would be to aid the States, it is possible that they could—and I don't think they would under the present directive, but they could—act arbitrarily on some fugitive. This is a very broad authority to give to the FBI.

Mr. KENNEDY. Mr. Chairman, their authority only comes into effect when the individual has fled the jurisdiction of the State to avoid prosecution after being convicted, to avoid being detained. Only under those limited circumstances can the Federal Bureau of Investigation—the Federal Government—come in.

I would say that, based on the history of the fact that this law, with a more limited scope, has been in effect these last 20 years, the Federal Government has prosecuted a very, very small percentage of these individuals. The only reason that we picked them up is to return them to the local government.

As I say, for the last 5 years there have been approximately 5,500, and the Federal Government has only prosecuted 25 of them. All the others have been returned to the local governments and they have disposed of them.

That is what our intention is. Our intention is to be able to help and assist the local governments for these other crimes.

Mr. McCULLOCH. Mr. Chairman, I would like to say in this connection that experience shows that where the Federal Government now has this authority, as the Attorney General has indicated, it has not been abused. There hasn't been any injustice so far as I know that has been visited on anyone who has been found guilty of violating both the State and the Federal laws in the area.

The same with the Dyer Act concerning the movement of motor vehicles across State lines. Our experience has been well nigh perfect in that field, hasn't it, Mr. Attorney General?

Mr. KENNEDY. Yes. Mr. Chairman and Congressman McCulloch, I have here a list from 1956 through 1960 of the number of arrests that have been made by the Federal Bureau of Investigation and the number of times the Federal Government has moved in. In 1956, 902 arrests and 11 convictions by the Federal Government. In 1957, 947 arrests and only 6 convictions. In 1958, 1,021 arrests and 2 convictions. In 1959, 1,149 arrests and 4 convictions. In 1960, 1,361 arrests and only 2 convictions.

That means your Federal Government only moved in a relatively small number of cases.

The CHAIRMAN. Would it be possible that there would be a dual crime—the crime where originally committed and the crime of crossing the State line to avoid prosecution?

Mr. KENNEDY. That is correct.

The CHAIRMAN. What would you do? Would you first find out whether the State would prosecute before you would start any proceedings to prosecute for this new crime of crossing the State line? And, if the State would prosecute, would you still go on with the prosecution in violation of this statute?

Mr. KENNEDY. I think that that would be a very important factor, but I would think that there would be a number of factors that you would want to consider. It has without any question, I think, been the policy in the past, and I am sure it will be the policy in the future, to leave these matters to the local and the State governments.

Only in extreme cases where there is some overriding factor should the Federal Government get involved in it itself.

The CHAIRMAN. That is a very good statement. Now I ask you: What would you require the State to do? Would there have to be first an indictment, sworn information, or a mere complaint to the police as evidence of the violation of a State law?

Mr. KENNEDY. Of course the individual under this law would have to be charged with an offense. But then, for instance, if a man fled from Michigan to New York, we would turn him over. If he was charged with an offense in Michigan and he fled to New York, we would arrest him in New York and turn him over to the local authorities in New York.

Then, depending upon the arrangement and relationship between the two States as to whether he would be returned, that would depend on the extradition procedures between the two States.

Mr. MEADER. Did I understand your interpretation of the phrase "to avoid prosecution" to be limited to instances where a charge had already formally been filed—that is, an indictment or information?

Mr. KENNEDY. No; I wouldn't think so.

Mr. MEADER. He could commit the offense and flee before the police had had any time to—

Mr. KENNEDY. That's right.

Mr. MEADER. And he would still be a fugitive under this bill.

Mr. KENNEDY. That's correct, where he is charged with an offense.

Mr. ROGERS. Certain States have different penalties for different crimes. I have in mind the question of what is known as the run-away pappy laws which we have here, which in my State, as an example, is a felony for a man to desert his wife and children and not support them; and he can be sent to the penitentiary.

Because he could be sent to the penitentiary for a year and a day at least, would that bring him within the purview of this act?

Mr. KENNEDY. Is that a felony in your State?

Mr. ROGERS. Yes.

Mr. KENNEDY. Then it is up to the States to make that determination.

Mr. ROGERS. Suppose in the State of Kansas, next to my State, it is called a misdemeanor.

Mr. KENNEDY. That depends on what the relationship is between Kansas and Colorado. That is what finally and ultimately decides whether the individual is going to be returned or not. All we do is make the arrest. We turn him over to the local State authorities and, depending upon what the relationship is and the arrangements between the various States, that is what makes the ultimate decision. We do not.

Mr. ROGERS. Thank you.

Mr. MEADER. Mr. Attorney General, has the Department of Justice or the FBI made any estimate of the expansion of personnel and additional cost that the adoption of this legislation will mean as far as the Federal Government is concerned?

Mr. KENNEDY. We know that it will be an additional cost, Congressman.

Mr. MEADER. Do you have any figure?

Mr. KENNEDY. We have just discussed it in general terms. I would rather wait.

Mr. MEADER. Is there any way such an estimate might be made? Frequently that question is raised by Members on the floor of the House.

Mr. KENNEDY. I will try to furnish that to the committee.

The CHAIRMAN. Mr. Attorney General, now turning to H.R. 6571, that concerns the interstate transportation of wagering paraphernalia. Would this apply to the sweepstakes information contained in newspapers? There is no exemption for newspapers in this bill. Many of our New York papers carry sweepstakes information.

Another question: We legalized bingo in New York. That is used by churches and other institutions. And there is transmitted through the mails over wireless communications information about bingo games to be held in my district on a particular night. What would be the result? It is legal in New York. Bingo is a game of chance,

and it would come within the definition of your wagering paraphernalia.

Mr. KENNEDY. I don't think it is covered here, though, Mr. Chairman. Bingo would not be covered. It is not bookmaking; it is not wagering pools with respect to a sporting event. And it is not numbers, policy, or bolita.

The CHAIRMAN (reading):

Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita—

Mr. KENNEDY. "Similar game."

The CHAIRMAN. That would cover bingo, for example, wouldn't it?

Mr. KENNEDY. Bingo in our judgment is not numbers; it is not policy; and it is not bolita. It is not similar.

The CHAIRMAN. It is a wagering contest.

Mr. KENNEDY. But it is not covered. If you would like to cover it, that is up to Congress.

The CHAIRMAN. What about the other question I asked? What about paraphernalia? That is a very broad subject.

Mr. KENNEDY. That is a broad word; but all those words are restricted as to the kind of event by (a), (b), and (c).

I go over the question of bingo. We will be glad to give you some judgment on all other kinds of documents.

The CHAIRMAN. Suppose a newspaper contains sweepstakes information? What effect would this bill have on that—information in the newspapers?

Mr. KENNEDY. What was the question, Mr. Chairman?

The CHAIRMAN. Suppose the newspapers contained information on sweepstakes—the daily newspapers sweepstakes on a betting event, a sporting event, and so forth. It gives you odds, and so forth. We should go into that, I think, very thoroughly.

One more last question, Mr. Attorney General. You have been very patient. On the availability bill, H.R. 3021, would the immunity by the Federal Government for testifying also carry State immunity so there would be no double prosecution if there is a violation of the State statute as well?

Mr. KENNEDY. They do, Mr. Chairman. It would also cover immunity for the States.

The CHAIRMAN. So there would be no prosecution in the States.

Mr. KENNEDY. That is correct.

Mr. RODINO. Mr. Attorney General, I recognize that all of this is to combat organized crime. But this is what is puzzling me. First of all, I would like to put this question to you. Do local law enforcement agencies indicate the need for this type of legislation in order to effectively combat crime?

Mr. KENNEDY. A large proportion of them do, Congressman.

Mr. RODINO. Don't you believe that this would seem to place a great deal of reliance on the Federal Government, which is already overburdened? I, of course, recognize the need to do whatever we must

do in order to effectively combat this. But don't you think that, as you pointed out in the Beaumont situation, there might again be a tendency of laxity on the part of local enforcement agencies?

MR. KENNEDY. I don't think there is any question about that some places, Congressman. There is no question about it.

MR. RODINO. Don't you think this is probably going to bring this about?

MR. KENNEDY. I think there is a serious situation in many sections of the United States at the present time where there is either corruption, dishonesty, or inefficiency, laxity, in dealing with law enforcement problems. I think this is chiefly a local problem. But the job is not being done at the present time.

I think it is having a very serious effect on our economy. I think that through these laws we can be of great help and assistance.

I would agree with you wholeheartedly. I think if there were local law enforcement able to do their job and do it effectively, it would be far less of a problem.

THE CHAIRMAN. Mr. Attorney General, I would like to ask you just one question because the bells have rung and we have to recess shortly. You participated, of course, in the Report of the Select Committee on Improper Activities in the Labor and Management Field. The report, which is dated March 31, 1960, states:

In the Midwest the organized underworld is known as the syndicate. Its operation still includes former Capone gang killers. It dominates the jukebox, game machine, and cigarette machine business in the city of Chicago and the ever-more populous counties surrounding it.

By economic and physical coercion and violence and murder, the syndicate was extorting tribute of over \$100,000 a year from jukebox operators, and an equal sum from game machine operators in Chicago alone. It was forcing jukebox operators to cease buying records at stores of their choice in favor of syndicate-owned ones, where they were forced to pay excessive prices for counterfeit disks. Businessmen were told to purchase and otherwise plug the records of syndicate-managed singers, and legitimate operators were forced out of business or forced to accept different thugs as uninvited, silent, uncontributing partners in, or at least 50 percent of the profits.

Do you care to amplify that in connection with jukebox operations?

MR. KENNEDY. The name of the company was the Lomar Record Co., Mr. Chairman. It was operating out of Chicago. I don't know quite what your question is. We found that the gangsters in Chicago controlled this company and made all of the jukebox operators in the Chicago area—and up into Wisconsin, Indiana, and in approximately four or five States—most of the major operators would have to buy their records from this particular company. Often a labor organization was used to bring the pressure.

THE CHAIRMAN. Thank you, Mr. Attorney General. As I said before, you have been very patient.

MR. KENNEDY. I appreciate your courtesy.

THE CHAIRMAN. We expect some additional information from some of the other members of your Department. As I understand, Mr. Cramer wants to ask one or two questions.

MR. CRAMER. You indicated, Mr. Attorney General, with regard to the communications section, that you didn't feel the wiretapping provision would be necessary in order to properly enforce that section. Could you give the committee some idea as to how it would then be enforced?

Mr. KENNEDY. I think I mentioned a number of ways. We have informants from the telephone companies. You have informants in other ways. The wiretapping situation causes problems. I fully support the position.

My position was enunciated by Mr. Miller before the Senate committee last week. I realize that it poses great problems and difficulties. As one of the Congressmen said, I don't want to have these bills knocked down because of the other. I think probably it would make it easier.

In any case, this could be a major step forward.

Mr. CRAMER. Wouldn't the wiretapping provision, limited to syndicated crime or organized criminal activities, make it much easier; pursuant, of course, to the recommendations of the Department of Justice that wiretapping could take place only upon court order and under court supervision—

The CHAIRMAN. I am afraid, Mr. Cramer, we can leave that for another hearing, because there are a lot of bills on wiretapping. When we reach that point, we can ask these questions.

We will now adjourn and we will resume at 2 o'clock.

Mr. KENNEDY. Am I finished, Mr. Chairman?

The CHAIRMAN. Yes, you are finished. Thank you very much.

Our next witness is our very distinguished colleague, a member of this committee. We are very happy to hear from the Representative of Texas.

#### STATEMENT OF HON. JACK BROOKS, A REPRESENTATIVE FROM THE STATE OF TEXAS

Mr. Brooks. Mr. Chairman, you are indeed kind to allow me to testify before this subcommittee on a matter of importance in this country.

I would like the unanimous consent of the committee to insert my remarks immediately following the Attorney General's testimony a short while ago.

The CHAIRMAN. You shall have that permission.

Mr. Brooks. I also would like to be able to revise and extend my comments, and I will summarize them now, and insert my statement for the record.

Mr. Chairman, let me first thank you and our colleagues here on the subcommittee for this opportunity to submit a few remarks to you in regard to the Attorney General's testimony here on May 17, 1961, as it pertained to Beaumont, Tex. Beaumont is my hometown and is the largest city in the Second Congressional District.

The Attorney General apparently presented to this subcommittee a summary of the report of the Texas General Investigating Committee to the Texas Legislature as a part of his testimony in support of proposed legislation concerning the control of organized crime and racketeering. According to the Attorney General's testimony this report of the Texas Investigating Committee and his summary of it concerned Beaumont.

Frankly, Beaumont is a fast-growing industrial city with an abundance of natural resources and good working conditions providing excellent opportunities for further growth, improvement and pros-

perity, and an opportunity to contribute to this country, a substantial support of its economic growth.

At this moment, there is under construction, announced, or recently completed more than \$100 million in new industrial and commercial construction. The area immediately surrounding Beaumont has under construction an additional \$100 million in industrial and commercial construction. And, according to recent statements, Jefferson County—of which Beaumont is the county seat—has the highest average salary and wage scale among the 12 largest counties in Texas.

Before I was elected to Congress, I represented Jefferson County in the Texas House of Representatives. As a member of the Texas Legislature, and as a Member of Congress from the Second District of Texas, I've been happy to have had a part in encouraging the economic growth of Beaumont and southeast Texas as well as to have participated in encouraging civic progress.

I authored the legislation creating the Beaumont Port and Navigation District and Beaumont has one of the finest ports on the gulf coast. I authored the bill creating the 4-year Lamar State College of Technology and today it stands as one of the largest colleges in the State and its scholastic standards rank among the highest in the United States. I have been sponsor here in the House of Representatives of the construction of McGee Bend Dam in the Angelina-Neches watershed. McGee Bend Dam will give our area an almost unlimited supply of fresh water for further business and job opportunities. I have also sponsored major improvements of the Sabine-Neches Waterway which connects the giant petrochemical industries of Beaumont and southeast Texas with world commerce.

Mr. Chairman, I mention this work to point out that the people of Beaumont and southeast Texas and I have worked together for many years to assure our area of increased business and job opportunities so that we may continue to make a significant contribution to our Nation's strength.

Beaumont has a professional symphony orchestra, an art museum, a Little Theater and a well-stocked city library, to name some of the cultural advantages of our city. However, Mr. Chairman, no one knows better than we that there is still work to be done and further improvements to be made. You can be sure that we are not satisfied to just rest on our oars at this point. You can be sure that we are continuing to work as hard as we know how to offer even better business and job opportunities for all our people and richer cultural advantages which all our people can enjoy. We have the same problems that any growing urban center can have, Mr. Chairman, and we are working diligently to provide our area with the healthiest possible environment.

Beaumont and southeast Texas have the natural resources, we have the skilled manpower, we have the modern transportation facilities, we have the land and we have the climate for future expansion and growth. Mr. Chairman, Beaumont and southeast Texas are working for a wholesome future and we believe that in this generation southeast Texas will come into its own.

Thank you for this opportunity to appear here today, and I hope that each of you will come down and visit us in the Second District of Texas the first opportunity that presents itself.

Thank you for your courtesy and generosity in allowing me to appear.

(Thereupon, at 12:15 p.m., the committee recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

The CHAIRMAN. The meeting will come to order.

The first witness will be Prof. Louis B. Schwartz, of the University of Pennsylvania Law School.

Professor Schwartz is no stranger to us. He appeared before this committee on a number of occasions and we all know and appreciate his contributions.

We are glad to hear from you, Professor Schwartz.

**STATEMENT OF PROF. LOUIS B. SCHWARTZ, UNIVERSITY OF  
PENNSYLVANIA LAW SCHOOL**

The CHAIRMAN. Have you a statement?

Professor SCHWARTZ. I do, and copies have been furnished to Mr. Foley and I believe have been distributed among members of the subcommittee.

I appreciate the invitation to comment on the antiracketeering program of the Department of Justice. I don't suppose I have to say that I sympathize completely with the purposes of the Department in offering these bills; namely, to suppress large-scale, multi-State crime and to assist local law enforcement.

Unfortunately, as you will see from the statement filed, the bills are not confined to large-scale multi-State crime and, instead of assistance to local law enforcement, there is proposed a great extension of Federal prosecution for local offenses, whenever there is any technical basis for it, however remote, such as a telephone call, or——

The CHAIRMAN. Are you reading from the statement?

Professor SCHWARTZ. No. I am not.

The CHAIRMAN. Are you going to read from the statement?

Professor SCHWARTZ. Generally speaking, Mr. Chairman, I don't like to read statements when they are on file, but I will cover the ground.

The CHAIRMAN. Do you want to incorporate this statement in the record.

Professor SCHWARTZ. If you please, Mr. Chairman.

The CHAIRMAN. That will be done.

(The above-mentioned statement is as follows:)

**ANTIRACKETEERING LEGISLATION PROPOSED BY THE U.S. DEPARTMENT OF JUSTICE  
(H.R. 6571, 6572, 6573)**

(Comment and summary of testimony to be given before the House Judiciary Committee, May 17, 1961, by Prof. Louis B. Schwartz, University of Pennsylvania Law School, reporter for the Model Penal Code of the American Law Institute, former Chief of General Crimes Section, Criminal Division, Department of Justice)

**GENERAL APPRAISAL**

These bills will do little good and some harm. They will not significantly diminish organized criminal activity, because they do not significantly add to the present risks of engaging in such activity. It is impossible now to conduct

a multi-State "racket" without violating existing Federal penal laws as well as State laws. The Federal penal laws referred to include laws relating to liquor, narcotics, prostitution, lotteries and other gambling, firearms, conspiracy, and income tax. Those who engage in criminal activity in disregard of these laws and of many State laws will not go out of business because Congress passes one more law making it a crime to travel or to use particular facilities in connection with activities which are already subject to severe punishment. Thus the bills will do little good.

The bills will do some harm because they are so loosely drawn as to make thousands of petty local infractions matters of Federal investigation and prosecution. This undermines local responsibility, diverts the resources of the FBI and other Federal enforcement agencies from their proper mission of protecting truly national interests, and degrades and burdens the Federal judiciary with cases appropriate for local police courts.

By the same token, this federalization of petty offenses leads to anomalous penalty provisions. Conduct which might entail a small fine or misdemeanor penalty under the law of the State now is to be converted into a Federal felony carrying up to 5 years imprisonment. Finally, needless overlapping of Federal and State crimes impairs valued civil rights, including freedom from multiple prosecutions for the same offense<sup>1</sup> and the freedom from compulsory self-incrimination.<sup>2</sup>

The proposed "antiracketeering" legislation simply does not zero in on the target. It purports to be directed against large-scale, multi-State, organizations to commit serious crime, where a State may be unable to cope with the situation; but the bills sweep into Federal jurisdiction small scale, petty crime, even where the State is fully capable of dealing with the situation and where interstate or other Federal facilities are minimally involved.

#### DETAILED CRITICISM OF PARTICULAR BILLS

H.R. 6571 illustrates the indiscriminating coverage of this "antiracketeering" package of bills. It would appear to subject any individual to 5 years imprisonment if he "knowingly" carries in interstate commerce a sweepstakes ticket, bingo board, numbers slip, perhaps even a summary of information relating to a race. The defendant need not be associated with any criminal enterprise, large or small. He need not even have a stake in gambling, since unless he is a "common carrier" it is enough that he knows he is transporting a gambling device or record, perhaps to an American Legion post.

H.R. 6572 goes even further in some respects. Its main target is "travel" in interstate or foreign commerce in connection with "unlawful activity." "Unlawful activity" is defined as "any business enterprise involving (unlawful) gambling, liquor, narcotics, or prostitution." It is not clear when a business enterprise involves unlawful gambling, etc.; but apparently the section applies to combinations of lawful and unlawful activities, and the 5-year penalty applies even to travel to promote lawful aspects of a business which involves "unlawful" activities. It does not appear that the unlawful activities must be criminally unlawful. Thus, any violation of the myriad State regulations relating to legitimate dealing in liquor and narcotics becomes a Federal felony. Even if H.R. 6572 were limited to criminally unlawful business activities, it would cover a vast range of regulations, violation of which entails only fines or very limited imprisonment under State law.

H.R. 6573, relating to use of interstate wire facilities to promote gambling, appears to cover several quite disparate types of cases. It reaches the professional conducting a large-scale gambling business, as envisioned in the Department of Justice letter submitting the bill; but one wonders why the maximum penalty for such operators is here limited to 2 years, in contrast to the 5-year limit provided in the other bills. Moreover, there is no reason why such an operator should not be equally punishable where he uses other Federal facilities to promote his business, e.g., wireless or mails, and where the gambling business is of the numbers type as well as of the sports contest type. On the other hand, it seems quite unjustifiable that an individual bettor should risk 2 years penalty for placing a bet by a telephone which he leases or maintains. To the extent that the section applies to the telephone company, landlords or others who

<sup>1</sup> Cf. *Bartkus v. Illinois*, 359 U.S. 121 (1959); *Abbate v. United States*, 359 U.S. 187 (1959).

<sup>2</sup> *Knapp v. Schweitzer*, 357 U.S. 371 (1958); *United States v. Kahriger*, 345 U.S. 22 (1953).

provide facilities, but are not accomplices in a betting business, the 2-year penalty is grossly beyond what is necessary to secure compliance.

#### COUNTERPROPOSALS TOWARD A RATIONAL FEDERAL PENAL POLICY

1. *Aid to the States in investigating multi-State crime.*—The States are entitled to Federal assistance in securing evidence against substantial criminal enterprises extending beyond their own borders. They are entitled to this whether or not the criminals drop a postcard in the mails or make a telephone call. If present statutory authority is inadequate, the FBI and other Federal investigating agencies should be specifically authorized to extend such aid.

2. *Development of a comprehensive Federal jurisdictional basis for cases appropriate for Federal prosecution.*—In any Federal system, there will be cases involving widespread criminal organization, where Federal prosecution will be most convenient and appropriate. For such cases, defined by Congress or Department of Justice regulation, there is need for a comprehensive jurisdictional formula which should be incorporated in the Federal penal code. It would be made a Federal offense to engage in the prohibited behavior (on a specified scale, etc.) when "any Federal jurisdictional means" has been employed in connection with such behavior. "Federal jurisdictional means" would be defined to include interstate and foreign commerce, mails, wire and broadcast systems, etc.<sup>3</sup>

3. *Department of Justice mandate to develop a national penal policy.*—The mission of the Criminal Division of the Department of Justice, as traditionally conceived, has been to supervise and aid the Federal district attorneys in prosecuting cases and to assume direct responsibility for certain prosecutions of exceptional character. It has in the past shown virtually no concern for aspects of penal administration other than Federal prosecutions, e.g., planned modernization of the Federal penal code, improving State penal codes, improving the qualifications and effectiveness of State and Federal prosecutors. It employs no criminologists, statisticians, or expert consultants in law or behavioral science.

The Criminal Division's traditionally narrow conception of its role is in striking contrast to that of its companion agencies in the Department of Justice, the FBI and the Bureau of Prisons. These have provided training, standards, and leadership for State as well as Federal operations. They express an overall philosophy in their own fields.

It is respectfully suggested that, whatever disposition be made of the pending antiracketeering bills, the Department of Justice be invited to reorient the Criminal Division as a broad-gaged "Ministry of Justice." A new administration has a new opportunity in a field of vital concern to the Nation.

The CHAIRMAN. Go ahead.

Professor SCHWARTZ. As I say, this program, upon analysis, is not limited to large scale, multi-State crime, and does not provide a program of assistance to local law enforcement authorities.

Instead, it undertakes a considerable expansion of Federal law enforcement. Even so—and I want to emphasize this—I am not so much opposed to the passage of these bills if they are carefully rewritten, as I am afraid that these bills will be thought of as a solution of the racket problem, and so prevent consideration of other measures that would be more to the point.

I have set forth some other measures that I do think would be more to the point, on page 3 of the mimeographed summary that I filed with the subcommittee. If I may take a few moments, I would like to outline that program.

In the first place, I believe strongly in aid to the State in investigating multi-State crime. That means that I would like to see the FBI, the Narcotics Division, and other law enforcement investigating agencies, available to local agencies, which request their assistance to solve crime, organized crime, of a multi-State character. If present law is not adequate to that, I would like to see it made adequate.

<sup>3</sup> See, generally, Schwartz, "Federal Criminal Jurisdiction and Prosecutors' Discretion," 13 Law and Cont. Prob. 64 (1948).

In the second place, I do think that there are going to be some major criminal syndicates for which Federal prosecution is the logical solution and for such cases, I should like to see developed a most comprehensive formula for Federal penal jurisdiction.

When I was in the Department of Justice, and since then as I have taught criminal law, I have been struck by the fact that Federal prosecution turns on the proof of a particular use of some Federal means. Here it is said to be a telephone call or walking across a State line. In other cases, it is the mail, or the fact that a national bank is involved or that foreign commerce is involved.

There are dozens of bases for Federal jurisdiction. Sooner or later, we shall develop the concept that any crime committed with Federal means is subject to Federal prosecution, and Federal means will be given a definition that includes mails, interstate commerce, broadcasting, affecting a Federal facility, et cetera. Federal penal offenses would be defined using some such formula as "Whoever, employing Federal means \* \* \*" or "Whoever, making use of means within Federal jurisdiction \* \* \*" The gist of the Federal offense would be the wrongful transaction itself and not, as at present, the incidental fact that a letter was mailed or a telephone call was made. Such facts have purely jurisdictional significance.

I submit that this development in Federal penal law would be one of the most effective means of strengthening the hand of the Federal prosecutor and putting the Federal prosecution on a logical, sensible basis.

Mr. HOLTZMAN. Could you give us a specific instance of what you have in mind?

Professor SCHWARTZ. Well, these bills themselves offer an illustration, Mr. Holtzman. It was pointed out this morning that transmission of certain information by wire, but not by wireless, would be covered. I assume that Congress is not interested so much in the fact that the wire is used, as that there is a criminal syndicate. If you are after the men who run that criminal syndicate, you are after them no matter what means they use—whether mail, wires, wireless, means of interstate commerce, facilities of national banking system, or what have you. Therefore, in the penal code of the future, crimes will be defined with reference to Federal jurisdictional means, generally, and it won't make any difference then, whether the prosecutor proves the use of the mails or the use of the wires or the use of interstate commerce.

The CHAIRMAN. How can we define such a crime along the lines you suggest?

Mr. HOLTZMAN. Except by a specific way in which these bills define them.

Professor SCHWARTZ. Well, as I say, I am talking about the Federal Penal Code of the future. The sort of thing that an up-to-date Criminal Division would be working on. There will be a section in the general part at the beginning of the Federal code defining "Federal jurisdictional means" to include the following: Use of the mails; use of the means of interstate commerce; use of the wires or wireless; use of the facilities of national banking; and so forth. Then the crime will be defined as committing robbery within the Federal jurisdiction or by use of Federal jurisdictional means.

Mr. ROGERS. You base your indictment on Federal jurisdictional means?

Professor SCHWARTZ. Exactly.

Mr. ROGERS. But when you come to the matter of proof don't you have to show that it may have relation to the mails or to the bank or something within the Federal means?

Professor SCHWARTZ. You will indeed, Mr. Rogers.

It will be necessary to establish that, but this phrase will constitute the equivalent of saying in a State prosecution, "this occurred within our jurisdiction."

Mr. HOLTZMAN. It would be a jurisdictional question?

Professor SCHWARTZ. It would be a jurisdictional question, exactly.

I have just thrown this out, Mr. Chairman. This is obviously not the bill before us. It is a part of a long-range program to give real force to the Federal Penal Code in cases appropriate for Federal prosecution.

The third branch of my suggestion is to change the orientation of the Criminal Division itself, in a very fundamental way. I know from having been a part of it, from having kept in touch with it for some decades, that it has always looked upon itself basically as supervising the district attorneys, occasionally undertaking direct responsibility for prosecution in selected types of cases. It is essentially a prosecutor's office.

What we need in the Department of Justice, I think, is the attitude that it is a national ministry of justice; that it is there not only to prosecute Federal crimes but also to lift the level of performance of law enforcement at all levels, local, State, and National. This function of national leadership is performed by other departments; for example, in relation to conditions of labor, in relation to education, national health, and the like. We have become so interlinked a community that it is no longer a purely local concern whether there is a vast criminal syndicate in New York, Texas, or Gary, Ind. The best way to upgrade law enforcement is to have the Criminal Division lead—as the FBI leads in police work and as the Federal Bureau of Prisons leads in custody and rehabilitation—toward higher, more effective standards of administration of criminal justice.

I think it inappropriate to do more than toss this out, to show I am not simply in opposition here. I want more effective law enforcement in the United States.

Mr. HOLTZMAN. Are you saying in substance, Professor, that there is need for a new national concept of this problem?

Professor SCHWARTZ. Exactly, Mr. Holtzman. That is the suggestion that I offer here, before going on to an analysis of the bills which, in my opinion, do not adequately move in this direction.

The CHAIRMAN. Will you amplify a little bit on that new concept that you speak of?

Professor SCHWARTZ. I speak of a concept of a ministry of justice, rather than purely a prosecutor's office, and a prosecution review office, which I think, basically is the position of the present Criminal Division.

The CHAIRMAN. What would be the difference?

Professor SCHWARTZ. Well, a broader conception would be concerned with improving the Federal Penal Code, for example, in the

respect which I mentioned a moment ago: trying to develop a comprehensive concept of Federal jurisdiction.

Secondly, promoting reforms of laws at the State levels. As reporter for the model penal code, I have had occasion to review the fantastically anachronistic State penal codes. The American Law Institute is drafting a model to bring them up to date. The Department of Justice has had little or no contact with this, and if it continued as in the past, would not take any interest in this.

I am saying that this effort to improve American standards of criminal administration generally would become an important part of the concern of such a Department of Justice.

I call your attention to the fact that the Criminal Division has never employed criminal statisticians; never employed sociologists or other behavioral scientists; never takes an overall look at the state of criminal law and criminal law enforcement; and therefore, commits itself to no general philosophy with respect to it.

The CHAIRMAN. In a word, you in part mean that the Ministry of Justice would endeavor to provide for preventives; would be more or less prophylactic?

Professor SCHWARTZ. I should hope so.

I should hope so, indeed, and would concern itself, I emphasize, with leadership in improving local criminal law administration.

You know, Mr. Chairman, of course, that the FBI trains local police. It puts out information of use to local police. Now, a comparable operation in the prosecution phase, and in the law-formulation phase, down at the State level, is what I am thinking about for a Criminal Division that has a broad national concern for promoting law observance and criminal justice.

Mr. McCULLOCH. Now, Mr. Chairman, in view of that statement and those that have gone before, I should like to inquire whether or not you believe that it would serve a useful purpose—yes, maybe be absolutely necessary—for a duly authorized Commission to make an investigation of crime and crime syndicates and racketeering, at both National and the State level, looking to a correlation of information and cooperation of local groups—otherwise if we go ahead piecemeal, it may take decades.

Is that right?

Professor SCHWARTZ. That is right.

Mr. McCULLOCH. Do you recommend that this committee consider the feasibility of establishing a Commission with broad powers and ability to go to the very bottom of these questions?

Professor SCHWARTZ. Are you thinking, Mr. McCulloch, of a crime commission, or some sort of regulatory body?

Mr. McCULLOCH. No. I am talking about a crime commission to study the problem—a study commission—to finally make recommendations for legislation which has been shown to be necessary even in our brief studies and hearings.

Professor SCHWARTZ. I am really not prepared to answer that. I cannot say that it would not be a helpful means of arriving at the conclusion, but it is not the remedy I have just proposed.

Mr. McCULLOCH. Let me ask you this.

How long do you think it will take to implement the recommendation that you have just made in view of the fact of, and—I use your

words—comparative disinterest of the Department of Justice, in co-operating with the States in this field?

Professor SCHWARTZ. Well, I am talking about a tradition which could be changed almost with the stroke of a pen.

Mr. McCULLOCH. Do you expect that change?

Professor SCHWARTZ. I think this is a new administration with a new opportunity and this is the purpose, in part, of my speaking this way to this distinguished committee. I hope that the hint will be taken and that there will be a reorientation in this direction.

The CHAIRMAN. Well, we have before us a bill to establish a Crime Commission. The Senate has one, too. I understand that the administration originally was behind it but then had some misgivings because the bill contained certain powers, like the power to grant immunity to witnesses. There are some students of criminology who feel that was going too far—giving such power to a Commission appointed by the President.

There are other blemishes in the idea. I understand now, that the administration has discarded the idea but I am inclined to favor what the gentleman from Ohio says, that we might, along the lines that you suggest, set up a sort of study group in this committee, or a joint study with the Senate Judiciary Committee, whereby we might check and study and evolve something along the lines that you indicated. I like the idea. I am a little intrigued with it—with the idea of setting up a Ministry of Justice, rather than a Department of Justice, which seems, apparently, to be interested only in prosecutions rather than ferreting out the causes of crime, and endeavoring to remove those causes of crime.

I take it, the Ministry of Justice would go beyond the purposes and the aims of the Department of Justice?

Professor SCHWARTZ. Mr. Chairman, may I make it clear that I have suggested this principally with respect to the orientation of the Criminal Division. In many respects, for example, the Department does function as a ministry of justice should.

In the Bureau of Prisons, it promulgates standards for local jails and makes them effective through contracts for temporary lodging of Federal prisoners in approved local jails. It collects statistics and it likewise employs psychiatrists and others to review the treatment programs.

I would cite the leadership of an exemplary public servant, and a very dedicated person, like Jim Bennett, who has done a lot along those lines.

The CHAIRMAN. Precisely.

In other words, instead of doing it sporadically, you would have it done in a logical fashion and have it all centered in the Ministry of Justice.

Professor SCHWARTZ. I would not even call for a change, Mr. Chairman, in the name.

It is precisely in the Criminal Division that I want a development which is comparable to what Jim Bennett has done in the Bureau of Prisons; to what J. Edgar Hoover has done in the FBI in terms of taking a broader responsibility than just for the particular case or for "Federal" conditions.

Mr. HOLTZMAN. This would be on the theory this is a national problem?

Professor SCHWARTZ. Exactly. That most of the solution has to come at local levels. I want to emphasize, Mr. Chairman, much as I am concerned about large scale crime, racketeering, the true concern of Americans about crime is not really with gambling, but with robbery, rape, murder on the streets, burglary—those things that threaten personal security about which they read in the daily paper. The repression of such offenses will inevitably remain a local problem. A nationally minded Criminal Division would be pushing with information, education, standards, training of prosecutors, and all that sort of thing, to help promote the sense of security among Americans; and also on crime prevention.

Mr. ROGERS. Would you include the public defender in that study?

Mr. SCHWARTZ. I most certainly would. The time is long overdue for that development, and I remark, Mr. Rogers, that the Criminal Division so far as I know, had no part in the development of that bill. It came out of this committee.

Mr. CRAMER. I think the professor has put his finger on what is one of the critical problems of getting at the syndicated crime problem throughout the country.

Now, that is what I was attempting to get at, as a first step, in title 1 of 6909 which would set up, in the Department of Justice, under the Attorney General, under his supervision, an office that would have the duty of cutting across these present obstacles which you refer to and get at—utilizing a group of investigators and assisting in prosecution within the Department of Justice—get across these barriers and ferret out these people who are involved in “syndicated crime” or organized gangsterism. The office would be under the strict control of the Attorney General and, to my way of thinking, would constitute a long first step in the direction of what you are talking about.

Isn't it true that one of the basic problems is, as you have pointed out here, that the Justice Department considers itself the prosecuting agency through its U.S. attorneys, and not the agency for correlating information relative to Mr. X, for instance, who may be in business, as the Attorney General testified this morning, in Kentucky and who then moves some place else. He may be operating under a legitimate business facade, a produce business or something, and it is necessary for some agency, within the Federal Government, to correlate this information and to determine whether a Federal or a State crime has been committed by this individual, and to make that information, under strict rules and regulations, under control of the Attorney General, available to the local prosecuting officers where this person might be within their jurisdiction.

Now, is it not true that that is one of the basic problems, and further, as pointed out in the Wessel report, which was the group appointed by the previous Attorney General to look into this basic problem, that there is information for instance, in the files of Internal Revenue; that there is information in the files of the FBI; and that there is information in all of the other investigative agencies of the Federal Government but nowhere is that information assembled, correlated, and evaluated as it relates to Mr. X who may be a notorious gangster involved in syndicated criminal activities.

Isn't that one of the basic problems? Would not this title be a step in the right direction?

Professor SCHWARTZ. I believe we are in agreement.

Mr. CRAMER. And further, on the question of the general problem of crime—I don't think even the bill I introduced, which is much broader than the one which the Attorney General sponsored, really gets at the crux of the problem. Furthermore, I don't think the Judiciary Committee or the Department of Justice knows all the answers or even what all the problems are. Therefore, as the chairman has suggested, the setting up of a subcommittee of this committee or a joint committee, to take evidence on these questions, to come up with effective tools to deal with the problem would constitute another step in the right direction, as I see it.

Mr. TOLL. Mr. Chairman, may I inquire from the professor, does the FBI and the Department of Justice now have jurisdiction in those cases which are lawful in some States and unlawful in others or do they only have jurisdiction in this country in those cases which are uniformly unlawful through the country?

Do you understand the question?

Professor SCHWARTZ. I think I understand the question, Mr. Toll. I can answer it this way, I believe.

There are a number of criminal statutes which apply, depending upon local illegality. For example, there is an act that prohibits the transportation of liquor into territories where it is illegal. So there is no obstacle presently, to having Federal legislation which in a sense, incorporates some local variations.

Mr. TOLL. Of course, this morning the testimony indicated that they were going to extend to a lottery field and gambling field, so a city like Las Vegas, which can legitimately import gambling machines, will have an advantage over other communities which cannot import gambling machines, so you are going to have two standards in the United States where certain areas can do a certain type of business; other areas cannot. You will have that situation. Is that so?

Professor SCHWARTZ. As I understand the pending bill, it would not be that kind of a bill. In other words, it undertakes to make interstate transportation of gambling, for instance, illegal, regardless of locality.

The CHAIRMAN. In other words, if I would send a roulette wheel or a bird cage or a table where you play crap—whatever you call it—to Las Vegas, I would be violating one of these statutes?

Professor SCHWARTZ. That is the way I read 6571.

The CHAIRMAN. In spite of the fact that Las Vegas has legalized gambling?

Professor SCHWARTZ. I so read 6571. I do not see exemption for gambling in places where gambling is legal.

The CHAIRMAN. But your gambling devices; games of chance; the definitions are so broad, despite the fact that in Nevada, gambling is legal.

Mr. TOLL. You take the New Jersey shore. Last year, they prohibited gambling devices up and down the shore. Las Vegas permits it. So there is a different standard of criminal operation and behavior in the various parts of the country.

Professor SCHWARTZ. Even where it is universally criminal, there are variations in the penalty. In some places, gambling may be

criminal, but it is subject to a fine; here, of course, it becomes a 2-year or a 5-year offense, depending on which statute is invoked.

The CHAIRMAN. You made a statement in your mimeographed papers here, on page 1.

By the same token, this 'federalization' of petty offenses leads to anomalous penalty provisions. Conduct which might entail a small fine or misdemeanor penalty under the law of the State now is to be converted into a Federal felony carrying up to 5 years imprisonment.

Will you amplify that, please?

Professor SCHWARTZ. Well, Mr. Toll has furnished the best illustration of it, as have you, Mr. Chairman.

Gambling may be legal or regarded as only a petty offense, in any number of jurisdictions, but under H.R. 6571, a person who knowingly carries in interstate commerce—that is to say, carries into a State where it is either legal or very trivially punished—a ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

Obviously, not every such case will be prosecuted. It is provided for here, but it won't happen unless somebody suspects somebody of something else which cannot be proved and decides that here is an available weapon.

The CHAIRMAN. Now, what about one of these bills, for example, under the Fugitive Felon Act. Suppose a witness under the Fugitive Felon Act—which provides that if anybody leaves the State with the idea of avoiding testimony, he would commit a Federal offense—suppose a witness is in contempt, say, in the State of New York, in contempt of court, and he flees to New Jersey, that is, to avoid giving testimony.

Under this bill, H.R. 468, the Fugitive Felon Act, he could be brought back to New York and he could be tried in contempt of court, which would involve, well, maybe 30 days in jail or maybe 6 months in jail but he also violates this Federal statute which might entail 5 years in jail and \$10,000. I think it is a \$10,000 fine.

Professor SCHWARTZ. That is right.

The CHAIRMAN. I am not sure.

Mr. McCULLOCH. Five.

The CHAIRMAN. \$5,000 fine. Now, the Attorney General this morning said, of course, it would not be the purpose of the Department of Justice to do anything like that, but it is possible, is it not?

Professor SCHWARTZ. It certainly is possible. To a degree, of course, one does have to trust one's law officers, but the function of Congress is to provide the most carefully drafted limits upon the discretion of law officers who can be responsible for 5-year imprisonment penalties.

The CHAIRMAN. In other words, the duty is on us to know exactly what is possible under the statute. We cannot trust any executive branch of the Government not to go the full distance to the end of the line. We cannot do that. We must know what we are doing. We cannot buy a pig in a poke any more.

Professor SCHWARTZ. No.

The CHAIRMAN. We cannot rely upon an Attorney General who, after all, is trying to curry—he is not going to be in power for, well, maybe more than 8 years if at all, and after that, what? The law is on the books, meanwhile. So that we have to envisage every possibility. So there is a case where, when they are in contempt of court, it might involve a man being sentenced to 5 years in jail. I would not say any judge would give it to him. I would not say the Department of Justice would bring him to book for that crime but it is possible that a crime could be spelled out under that kind of a state of fact.

Professor SCHWARTZ. That is a criticism that runs through this legislation and I think it could be solved by more careful drafting and recognition of variations in maximum penalties.

Mr. McCULLOCH. Before we go ahead, I would like to make this comment. I certainly agree with our able chairman that a judiciary committee, above all others, should always be very careful in looking to possibilities over and beyond probabilities; but if we strain at every possibility, then we may never make any progress. We have passed some legislation in which the probabilities that the chairman has discussed were there, one of which was mentioned this morning. So we have got to weigh the problem which is before us and take a calculated risk on possibilities even though they may be remote.

If the cancer is apparent and deadly, we must move with that degree of certainty in order to save the patient's life. I think, in this matter of racketeering and like crimes, we are approaching that realization of the peril.

The CHAIRMAN. There is no doubt that what Mr. McCulloch says is true.

We have new types of crime and new methods are used too, in connection with criminal conduct, as has been testified to most eloquently this morning.

I will ask you, professor, how can we meet those issues unless we have bills of this kind?

Professor SCHWARTZ. We can meet them all right, by the methods I have suggested. One is to provide certainly for Federal investigation facilities where you have multi-State large-scale crime. That is the first of the proposals I advanced on page 3. The FBI facilities for picking up information anywhere in the country should be used.

In the second place, you can meet that by drafting laws which do confine themselves to the evil as these bills, I am afraid, do not. That is to say, laws which in some way are tied to major groups, committing serious crimes on a multi-State basis. That is what the Department says it is after, but not one of these bills is so confined.

If I may, I would like to illustrate the overreach of some of these bills.

Mr. CRAMER. You are familiar with the definitions used in 6909. Throughout the bill, the bill relates to syndicated crime, defined so as to combat substantial concerted activity in or affecting interstate or foreign commerce or any part of such activity, involving violations of law, Federal or non-Federal.

Isn't that the type of definition you are looking for?

Professor SCHWARTZ. Certainly. That is a great improvement over what we have here.

Mr. CRAMER. To clarify the point, we have on gambling devices, title 5 of H.R. 6909, language which carries out the Attorney General's recommendation, and if the committee will look on page 11 of 6909, you will see there is a provision specifically excluding the shipment to States, of gambling devices to a place in any State where such devices are lawful. In other words, where it is lawful, there would be no problem. The gambling device statute proposed is a registration statute. The only thing prohibited is the shipping of these gambling devices into States where it is unlawful for gambling to take place. It also keeps the Federal Government fully informed as to who is manufacturing these devices by requiring registration so they cannot be illegally and illicitly distributed.

That is the objective of the gambling device section, as compared with gambling paraphernalia section. Gambling paraphernalia, of course, is specifically limited to those things illegal in all States, involving numbers rackets, and that sort of thing, so the question of the chairman, I think, is answered in that respect.

You have studied this particular bill, have you not?

Professor SCHWARTZ. I want to say this is the type of refinement which I think would improve the legislation. I don't wish to be committed to syndicated crime, because of some problems of definition, perhaps.

Mr. CRAMER. That is the type of definition you had in mind, is it not; these concerted activities by organized gangsters is the thing this legislation should get at. Right?

Professor SCHWARTZ. Multi-State, serious crime, on a substantial scale.

Mr. CRAMER. That is precisely what this definition provides. It provides "substantial concerted activities." That takes care of that; "affecting interstate or foreign commerce." That takes care of all the States; "where any part of the activity involves violations of law, Federal or non-Federal."

Professor SCHWARTZ. For example, when you say interstate commerce—

Mr. CRAMER. It has to be involved.

Professor SCHWARTZ. I am simply reserving a little freedom of comment when I come to think about this bill. I don't wish to be committed entirely to this one.

Mr. CRAMER. You think it is an improvement?

Professor SCHWARTZ. Indeed. It attempts to refine the issue; it attempts to draw the line between what the Federal Government should interest itself in, and what it should not.

Mr. CRAMER. Let me ask you this question. How in the world can the provision with regard to telephone restrictions be employed or carried out unless you have a wiretapping section, limited to syndicated crime? How are they going to discover the violation?

Professor SCHWARTZ. I heard the Attorney General answer that question this morning. I think, myself, that these are closely related and we may not agree as to whether we ought to have the wiretapping for that purpose but I agree that if you are going to have a crime, federally defined in terms of use of the wires, there would be very strong pressure at least, to make that effective by a wiretapping bill. At that point—

The CHAIRMAN. I remember Senator Kennedy—that is, the President when he was Senator—he abhorred wiretapping. He said he would have no part or parcel of it. Now, we have the very opposite situation. Mr. Miller testified before a Senate committee only a few days ago, where he wants wiretapping under certain conditions.

Now, will you please tell me how you reconcile those two proposals?

Professor SCHWARTZ. May I treat that as a rhetorical question, Mr. Chairman?

The CHAIRMAN. Certainly.

Professor SCHWARTZ. If I may, I would like to go on to an analysis of the terms of one or two of these bills, to show the overreach of the bills.

I think the best one to use for that purpose is H.R. 6572, which is travel in interstate or foreign commerce in connection with unlawful activity.

Now, unlawful activity is defined as any business, or enterprise, involving unlawful gambling, liquor, prostitution, or narcotics. It seems to me clear that this is directed at enterprises which have both lawful and unlawful components. Indeed, a good deal of the concern in the last few years has been about the spread of "hot" money, so to speak, into legitimate enterprises. They may be legitimate liquor distributing enterprises, or apartment houses, or something of that sort.

At any rate, it is clear that the objective here is not unlawful activity as such but a business enterprise that involves unlawful activity.

Now, if the act means what it says, then if you have such a business enterprise, it becomes a Federal felony to move even to promote the lawful aspects of this enterprise. All a prosecutor will have to prove is that there is a business enterprise, and that it has some unlawful incidents. Then if you move in interstate commerce to promote that business, you are violating this act, as I read it.

The CHAIRMAN. Let me ask you something about this.

On page 2, line 10, suppose A and B, in the District of Columbia, make an arrangement, A giving B \$5 to bet on a horse, and this betting is to be done by a bookmaker, C.

A gives B \$5 to bet on a horse, and the money is to pass ultimately to C, a bookmaker, by B.

The horse wins. A gets the money. B gets the money from C and divides up with A.

Now, is that doing business—

Professor SCHWARTZ. I have discussed this with members of the Criminal Division and I know what the intention is but I don't think the language clearly answers your question, Mr. Chairman.

The intention is to get only the people who are conducting the gambling business. That is all.

The CHAIRMAN. I know. I am aware of that, but I think the language is loose.

Professor SCHWARTZ. It certainly is.

The CHAIRMAN. It needs tightening up because otherwise, you are going to get all manner and kinds of people who are not in these syndicates, who are engaged in, shall we say, petty wrongs.

Professor SCHWARTZ. Oh, yes. Yes. To make a business enterprise would not require very much—certainly would not require the kind of large-scale, multistate criminal syndicate that the Department is interested in. But even beyond this, it should be observed that this bill says it is unlawful activity, if it is a business enterprise involving gambling, liquor, narcotics or prostitution, in violation of the laws of the State.

Now, I just have a few examples, here.

The CHAIRMAN. Do you have any example here—the example I gave this morning, about a girl and a boy in the District of Columbia, going to Virginia; fornication is committed. That may be a crime in Virginia. That is made a Federal crime here.

Professor SCHWARTZ. Of course, the answer given to you is, we did that long ago in the Mann Act. I think that was a mistake at the time. It ought not to be repeated and enlarged; but aside from prostitution, think of the impact of this on, for example, the type of merchandising by lottery methods, which has been outlawed by the Federal Trade Commission. The Federal Trade Commission has held that it is an unfair, competitive method, to sell by lottery, including, for example, sale of penny candies on the basis that the child gets five more candies if one that he buys turns out to have a chocolate center. Such activity is "unlawful."

This bill does not say criminally unlawful.

If you operate a liquor business, and violate any of the innumerable regulations that apply to a liquor business, and you travel in interstate commerce, you are traveling to promote a business enterprise involving liquor in violation of the State law.

Druggists who violate labeling or other laws, affecting the conduct of that business, become potentially subject to this definition of "unlawful activity" as business enterprise involving narcotics, conducted in violation of laws of the State.

A printing business that prints tickets, which might have multiple use—in short, this has a great number of impacts which are not the ones which the Department intends, but which are nevertheless there—violations potentially hanging over, not merely racketeers, but lots of people, who in some way conduct themselves in violation of the State law, and in pursuance of that business enterprise, travel in interstate commerce.

I would like to say, really in conclusion—because I saw from the questioning this morning that all of the vulnerability of this legislation was already quite apparent to this committee—

The CHAIRMAN. What about the antitrust laws?

Professor SCHWARTZ. Yes.

The CHAIRMAN. Would not a fellow getting together with another, going across the line to fix prices in Virginia—he lives in the District of Columbia—be criminally involved there? They could be prosecuted criminally. There may be a Virginia antitrust law.

Professor SCHWARTZ. I don't think that would fall within the act because they limit themselves to particular kinds of illegality—gambling, liquor, narcotics, or prostitution.

The CHAIRMAN. That is correct. It would not involve antitrust laws.

Professor SCHWARTZ. I suppose presently it is a misdemeanor, under the Federal antitrust law—the Sherman Act says you get a year in jail if you restrain interstate commerce.

Mr. MEADER. I would like to hear you discuss the word involving any business enterprise—not “consisting of,” but “involving.”

Professor SCHWARTZ. Precisely. That puts the finger on what I was discussing a moment ago, that you get much more than the illegal activities. It is something larger, which involves, though it may not consist of, illegal gambling, and so forth, and that is a major vice here. It may be that the Department will be willing to amend this so that the travel must be to carry out the illegal activities. At any rate, I want to raise, in conclusion, a kind of a fundamental question about how much good will be accomplished here. We have dwelled on the dangers of overextension of Federal prosecution; maybe those dangers, as Mr. McCulloch said, are dangers that one ought to risk, if one was gaining a good deal in the way of suppressing large-scale racketeering.

I submit there is not much to be gained along that line.

My view is that these bills will not significantly diminish organized criminal activity because they do not significantly add to the risks of such activity.

You cannot conduct such an enterprise, a large-scale multistate, criminal syndicate, involving prostitution, or gambling, or narcotics, or liquor, without violating any number of existing laws, Federal and State.

These laws relate to liquor, narcotics, prostitution, lotteries and other gambling, firearms, conspiracy, and income tax.

Now, I put it to anybody, if a man is operating already in disregard of all of these Federal laws, as well as of the State laws, he is not going to go out of business, because you now tell him he cannot cross a State line to promote that business.

He already crossed a great many lines before he had gotten to this statute and, therefore, I would not really expect a serious diminution of even the activity the Department is trying to suppress as a result of passage of laws like this.

Mr. McCULLOCH. Might I have one question there?

Do you believe that where there have been multiple violations of Federal and State law there is a general opinion—and I think properly so, and I hope that it always will continue to be so—that punishment is swifter and more certain, and meted out upon a more just and even basis in the Federal courts rather than at the State and local level?

Professor SCHWARTZ. Mr. McCulloch, I am sorry, but I was not quite clear on part of that question. Would you ask that again?

Mr. McCULLOCH. The question, perhaps, was not quite clear.

To go on. Do you think that all things that would be proscribed by this legislation, are now proscribed by some Federal legislation?

Professor SCHWARTZ. No; I do not; no. This legislation does add another string, you might say; another line he cannot cross but he crossed a great many.

Mr. McCULLOCH. Now, as an able professor of law in this field, have you, or have you not, found that oftentimes there is not the same

desire in some jurisdictions on the State or local level to enforce the laws against illegal actions as there is when that same act is proscribed by Federal legislation?

Professor SCHWARTZ. Oh, yes. I think in many areas you can count on a more effective law enforcement through the Federal agencies than through the local agencies, which may be immobilized either by lack of finances, or corruption, as the Attorney General indicated this morning.

Mr. McCULLOCH. Or by lack of ability in public office.

Professor SCHWARTZ. Indeed. That is true.

The CHAIRMAN. In one of these proposals, Professor, it is made a Federal crime for an individual to mislead an agent of the Government, who is investigating or running down, tracking down, some crime.

The FBI agent comes to X and wants some information because he is checking some crime.

If X misleads him deliberately, although there is no formal indictment, no formal proceeding, no information field, it has been declared in the *Scoradow* case, that is not a violation. This bill—one of the bills—seems to make that a violation.

Do you think that should be made a violation where there is no violence and there is no attempted violence? It is just giving misleading information.

What is your opinion?

Professor SCHWARTZ. I have had an opportunity to consider this very thoroughly in connection with the Model Penal Code. We asked ourselves whether we should penalize telling lies to policemen, and the answer that was reached by the American Law Institute, in full debate here, with prominent judges and lawyers of the United States, was that we should not do that. The Attorney General spoke this morning about intimidation. Intimidation is and should be a criminal offense, but deceiving is quite another matter.

The CHAIRMAN. Originally, there were three prongs to that. One was threats; the other was violence and intimidation; and the third was misleading information. A, B, and C. He wanted all three in a Federal statute, but I wrote to them. I said there is a big difference between violence, and intimidation, in conterdistinction, to misleading information.

I think he has indicated now, he would rather have the bill split up, implying, of course, that he is not completely sold on the matter of giving misleading information, but he still thinks there should be a separate bill on misleading information.

Now, if we have such a bill, would it not have the effect of everybody clamming up and refusing to say anything to an FBI agent? A good, astute lawyer would tell his clients, "never say anything to a cop. Never say anything to a policeman, because you will get yourself in trouble."

Professor SCHWARTZ. I think that would be one of the effects. Any well-advised person would just be careful to say nothing, because every one realizes how, in the course of an oral inquiry, things may be misunderstood. The ultimate issue of whether you were or were not a perjurer—I use that, although it is not sworn testimony, but the effect of it is the same, criminal falsehood in connection with official matters—the whole issue on this quasi-perjury would be, do you be-

lieve this good, clean looking FBI agent, or this so-and-so? And nobody would risk talking, on the basis of that sort of thing.

Furthermore, I may say it puts a dreadful responsibility on the single investigator. He has it within his power to put the man he is talking to in jail. All he has to do is come in and say, "I was talking to him about this forthcoming investigation. He told me so-and-so, and we are ready to prove so-and-so is not so."

The CHAIRMAN. He would say, "He lied to me" and therefore, of course, it would be a question of fact for a jury to determine, whether there was an intent to lie, but that can be spelled out, depending on the matters presented to the jury.

Professor SCHWARTZ. It is a very dangerous provision.

The CHAIRMAN. It is misleading. In other words, a man may say, the FBI man said, "Where is the post office," and the post office, actually, is five blocks to the east. The man would say, "Well, I think the post office is five blocks to the west."

That is giving misleading information. He might find himself in the toils of being accused of a felony.

Professor SCHWARTZ. There is no doubt about it. At first blush, I think I felt as anyone else would feel, a man who will not cooperate with the police, or effectually misleads the police, is really antisocial and ought to be subject to penalty. I think that is your initial reaction, but when you consider this power that it puts in the individual investigator, in effect, to jail the man he is talking to in private, it is quite different from a grand jury investigation or from interrogation in a courtroom where you have the judge present and opposing counsel. This all occurs in private, as the agent goes about gathering information. So-and-so says she was not here yesterday. Well, later it turns up she was, and that is another defendant now, not just a witness that first made an evasive or misleading reply. In the course of investigating one crime, you make four or five others.

The CHAIRMAN. Just one more question. Of course, that is in distinct counterdistinction to where the FBI finds a man used violence.

Professor SCHWARTZ. Oh, yes.

The CHAIRMAN. To prevent the investigation or he has intimidated somebody. That is a different story. Am I correct?

Professor SCHWARTZ. Certainly. Certainly.

Mr. MEADER. Professor Schwartz, I want to read one phrase in the second paragraph of your prepared statement:

"This undermines local responsibility." I would like to ask you your view on the possibility that the Federal Government, passing laws, criminal laws, in the field of gambling, liquor, narcotics, and prostitution, might under the *Nelson* decision of Federal preemption, actually strike down State laws in those fields, if the *Nelson* decision were to be followed? Do you have any view on that?

Professor SCHWARTZ. Well, I would comment as follows, Mr. Meader: I think the *Nelson* decision is not very much broader than the precise facts on which it arose.

Mr. MEADER. It was a criminal law that was stricken down.

Professor SCHWARTZ. It was a criminal law, but it was a criminal law relating to undermining the Government. I doubt whether, even without the express provisions to which the Attorney General called attention this morning, that you would get a preemptive effect in these situations.

We have lived too long with legislation like the National Motor Vehicle Theft Act and the Mann Act where concurrent enforcement has gone on. We have been too long with a system like that, for me to suppose readily that the passage of this law would preempt local enforcement. It is a danger, and perhaps, one against which some remedial, express language should be included.

Mr. MEADER. Some language should be included. I was troubled by the fact it was in one of these bills, not in the others, because then you can start drawing inferences from the difference of treatment.

The CHAIRMAN. Professor Schwartz, H.R. 7039, concerning the transmission of bets, wagers, and so forth, can you see any reason for exempting newspapers carrying essential information which every bookmaker wants and desires? Is there any excuse—can there be any excuse for exempting the newspapers, which does the very same thing that others might do in furnishing information of that character?

Professor SCHWARTZ. Well, it rather exposes a bit of absurdity; if the same thing in effect, can be accomplished through open publications, by TV, and newspapers.

The CHAIRMAN. TV may be indicative—

Professor SCHWARTZ. Which bill are we discussing now? At any rate, I must answer your question directly.

The CHAIRMAN. The answer was, on TV, that the Federal Communications Commission would regulate that, but I don't know—

Professor SCHWARTZ. I did not understand that answer, frankly. The Federal Communications Commission can suspend broadcasting stations, I suppose, but this is a problem of jailing somebody.

The CHAIRMAN. This is a problem of crime.

Now, the Federal Communications Commission has no power of sanctions. All the Federal Communications Commission can do is to wait 3 years until a permit expires; then they can renew or not renew. That is all it can do.

It cannot censor; it cannot tell the operator of the station what it shall or shall not transmit.

Professor SCHWARTZ. I did not understand that explanation at all.

The CHAIRMAN. I did not want to press him on it, but that was a very unsatisfactory answer.

Professor SCHWARTZ. Let the FCC handle that situation.

As for the exemption of newspapers, I don't see in principle, it can be explained. It is just a practical matter. You know this is going to be reported. You know the newspapers would not be blocked from reporting.

Mr. MEADER. Do you see any constitutional problems involved in this legislation?

Professor SCHWARTZ. I, by habit, come to constitutional questions last. If I am satisfied that it is unwise, I prefer to meet it at that point.

Mr. MEADER. Is there any impairment of free speech?

Mr. HOLTZMAN. Will you yield? Let me give you a set of facts.

A decides he wants to have a card game. Gambling is illegal in that particular State and he uses the mails to invite several of his friends to participate in the card game.

Question, now, can we make this the subject of a Federal crime, and would—

The CHAIRMAN. If it is a crime in that State?

Mr. HOLTZMAN. Yes. It is a crime in the State.

And question No. 2. Would we then be violating the Constitution of the United States if we do so?

Professor SCHWARTZ. The mail power has been given such broad scope. Proscribing the use of the mails has been stopped only when it comes to a question of sending things which the Supreme Court finally decides are not obscene.

Invitation to a social card game: I know of no cases disposing of that.

Mr. HOLTZMAN. A card game is illegal in the State now. The invitation goes through the Federal mails.

Professor SCHWARTZ. Yes. You are pressing me to give you a constitutional opinion in a case for which I know no precedent. I would be able to settle my view against this legislation long before I got to the question of its constitutionality.

Mr. HOLTZMAN. Are you suggesting that we call something unconstitutional that isn't necessarily good?

Professor SCHWARTZ. I think that is the most important thing the American people have to understand—that the Constitution stands there not as the statement of the ideal, but of the minimum decencies. Those are ultimate tests of power, not statements of what should be done.

Mr. FOLEY. Let's take the reverse of that. Let's take the situation which we know occurs where hired killers—referring to Murder, Inc., days—would be hired. They fly into Detroit. A man would come up and put the finger on the victim, five shots are fired—then out to the airport, on the plane, and back to New York.

Would Congress have the authority to say the use of that airplane which resulted in a violation of the law in the State of Michigan, wherein the homicide occurred—that that so-called definition of "conspiracy" would be constitutional?

Professor SCHWARTZ. I wouldn't say it wasn't. You say "use of the airplane;" it is travel in interstate commerce.

Mr. FOLEY. It is travel in interstate commerce to get to the scene of the crime and flee from it also.

Professor SCHWARTZ. I see it in much the same light as the Fugitive Felon Act. That is running away right afterwards. If you use the facilities—

Mr. FOLEY. It would be perfect as far as the leaving is concerned. I am thinking about the preparation. This is pure preparation—flying from New York to Detroit.

Professor SCHWARTZ. I don't have any conviction that that is unconstitutional.

Mr. FOLEY. Let me say this. It is a conspiracy. It is no offense against the United States as far as substantive crime is concerned. But the mere use of that facility, you believe, would be a valid exercise of control over interstate commerce under the Constitution?

Professor SCHWARTZ. The recent decades of constitutional decision in the Supreme Court are such that almost any rational employment of the Federal jurisdictional means will be sustained.

Mr. CRAMER. Will the gentleman yield on that? That is precisely the type situation that title 2 of my bill attempts to get at, on a limited jurisdictional basis, under terroristic offenses and later on, travel in

interstate commerce—limiting it to the definition of “syndicated crime.”

These people who travel for these purposes, including murder—Murder, Inc.—which is a problem I am particularly interested in because some 22 such murders have occurred in my district in the last 25 or 30 years without a suspect. It is quite obvious, and local law enforcement officials themselves have stated their opinions, that killers are imported from without the jurisdiction. As a result, local officials' hands are tied. Certainly there should be some authority, at least for the FBI, to help investigate and assist the local authorities in prosecuting such crimes and that is exactly what I provide for in title 2 of my bill.

Professor SCHWARTZ. I said there was constitutional authority. As to what should be done, I agree with you that Federal enforcement and investigation facilities should be made available to the local authorities and the man prosecuted for murder locally.

Mr. CRAMER. That is precisely what the title which I have introduced suggests. On the question of obstruction of investigations—title 10 of my bill prohibits obstruction but is limited to corruptive threats by force or violence, or injuries or threats or attempts to injure. I specifically left out the prevarication subsection recommended by Mr. Kennedy.

Do you think there is any danger in that approach?

Professor SCHWARTZ. Subject to my —

Mr. CRAMER. It is limited to the provisions of this act, H.R. 6909, the total provisions of the act.

Professor SCHWARTZ. Yours does solve this question of deception to policemen. Yours is a selective —

Mr. CRAMER. And it is tied in specifically to the Antiracketeering Act of 1961. Otherwise it includes all these elements the Attorney General asked for but on a somewhat more limited basis generally. But it furnishes all the tools that have been recommended with the limitations which I have just mentioned; and gives the Attorney General the authority, or makes it a Federal crime if there is an obstruction of justice. This is the same thing we did with regard to civil rights, or very similar.

Professor SCHWARTZ. I must confess I haven't looked at this recently.

Mr. CRAMER. I don't mean that. I mean it is a sounder approach, is it not?

Professor SCHWARTZ. I am very happy with it. At the moment it eliminates the difficulty of deception.

Mr. HOLTZMAN. Would you yield at that point? I wondered if the same rule would apply where a State line is crossed and there is a lynching with the same philosophy and ruled upon in your opinion?

Professor SCHWARTZ. I have never had any doubt about the constitutionality.

The CHAIRMAN. We will be bogged down in civil rights if we don't be careful.

Professor SCHWARTZ. I hope we don't open that.

Mr. CRAMER. Civil rights gets involved with murder if it involves syndicated criminal activities. That is the point I raised, if the chairman will remember, when we had the civil rights bill before us. At that time the Justice Department advised us that, under the Fugitive Felon Act, as you recall, Mr. Chairman, unless there is a known suspect, the Federal Government has no authority to go in. And when it is murder, there is no Federal crime involved on the local level.

Therefore, the Federal department's hands are tied even when the local authority requests such help. Isn't that true?

Professor SCHWARTZ. Which is certainly not the way it ought to be.

Mr. CRAMER. That is what title 2 and the subsequent titles of my bill are intended to cover. It is on a sufficiently limited basis that I think it is a sound approach.

Professor SCHWARTZ. May I say as to your title 10 that the one thing that would give me some pause is the word "obstruct." "Obstruct" is almost limitless and some decisions have been rather surprising.

Mr. CRAMER. It looks like I made the mistake of accepting the language of the Attorney General, then, in that respect.

Professor SCHWARTZ. "Obstruct" or "impede." You can obstruct or impede an inquiry by not answering questions or by answering them with transparent falsehoods. I don't know quite how far it goes. I was thunderstruck by a decision in the second circuit a couple of years ago in which several men were being prosecuted at once for income tax fraud and for obstructing the Government.

The way they did both was to keep such elaborate books that when the jury finally came to the end of the case, they acquitted them of income tax fraud because they couldn't understand the books, but convicted them of obstruction because the books were so incomprehensible.

If obstruction goes so far as that—

Mr. CRAMER. May I have the opportunity, Mr. Chairman, to consult with the professor—not taking the time of the subcommittee?

The CHAIRMAN. We would be glad to get an extension of your remarks, Professor Schwartz. We are very grateful to you for your statement and for your very elucidating remarks, particularly in answering the inquiries.

Professor SCHWARTZ. Thank you very much, Mr. Chairman.

Mr. TOLL. Mr. Chairman, may I also join in complimenting the professor, who comes from the city of Philadelphia, on the excellent presentation he has made. He has contributed greatly on this subject.

Professor SCHWARTZ. Thank you.

Mr. CRAMER. When you submit the extension of your remarks, will you submit an analysis of my bill at the same time?

Professor SCHWARTZ. I am certainly going to have to do some more homework.

Mr. CRAMER. It would be very helpful.

The CHAIRMAN. Mr. Stratton, we will be very glad to hear you.

**STATEMENT OF THE HONORABLE SAMUEL S. STRATTON, MEMBER  
OF CONGRESS FROM THE 32D DISTRICT OF NEW YORK**

Mr. STRATTON. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear here before you. I appear specifically in behalf of my own bill, H.R. 5230, which I have introduced dealing with the subject of interstate crime.

It is not identical with the legislation which has been submitted by the administration, but it is a similar approach. I might say that, while I am testifying specifically in behalf of my own bill, I am also very heartily in favor of the program submitted by the Attorney General and I would like to support it too.

I have no specific pride of authorship and would quite willingly support those bills in place of my own, although I think it is possible that some of the wording in my bill may be perhaps more acceptable, in view of some of the questions that have been raised by the subcommittee, than the wording of the legislation before you.

I might also say, Mr. Chairman, that I am appearing here as no legal expert. I am not a lawyer and I do not profess to have the answers to some of the legal questions that have been raised today with regard to this kind of program generally. Rather, I am testifying in the light of my experience as a city councilman and as mayor of the city of Schenectady, where for a period of some 9 years I had some experience in trying to deal with organized crime and with gambling on a local level.

It is my very firm testimony, in the light of that experience, that there is a real loophole in existing legislation, both at the local and the State level, for dealing with crime, racketeering, and gambling, specifically.

I think this has been brought out many times, perhaps most dramatically by Senator Kefauver in his televised hearings a few years ago—and even more recently by the New York State Crime Commission.

I remember at the time I was dealing with this subject, people took the attitude—many of them in our community—that gambling, for example, was penny-ante stuff and wasn't something that should concern a municipal legislator or a municipal official. I am somewhat gratified that the New York State Crime Commission in its recent report made it quite clear that in their judgment and on the basis of the evidence that they had received, the funds that came through gambling actually supported much broader kinds of crime which even those who shy away perhaps from saying anything unkind about gamblers would agree are highly improper and certainly ought to be eliminated.

I might also say, Mr. Chairman, and I don't think that this is anything new, but I think that perhaps as someone who has had some experience in this field it might be worth reiterating, that as this kind of thing continues in a local community, as crime continues, as gambling operations—particularly those that extend across State lines—continue, the pressures mount for corruption, particularly at the local level.

If we don't deal with this menace and deal with it promptly and firmly, we are in fact in a situation where the individuals who really exercise the control in municipalities around the country are not those

who were so elected by the people, but rather those who, through illegal operations of this sort, are able to establish an unholy influence over those who have been elected.

So, as a matter of legitimate fact, we do have—or at least we have a tendency to have—in such communities “hidden” or underground governments, as the term has frequently and dramatically been used.

The pressures in the direction of corruption are very great, and it is a brave local legislator or official who can resist them, because even those who should be opposed to this kind of thing tend to pooh-pooh any serious effort on the local level to break up this kind of operation.

Mr. McCULLOCH. Mr. Chairman, I would like to inquire of the witness right at this point: What have the newspapers been doing at the local level in making known to law-abiding citizens the racketeering and the syndicated crime that is going on in localities of which you are speaking? What has the radio been doing and what have other media been doing to inform the people of the organized crime menace and what have they been failing to do that they should be doing?

Mr. STRATTON. I think some newspapers have certainly been very effective in this regard. The New York Journal-American, for example, has carried on a campaign against the rackets for a number of years. Local papers are perhaps somewhat reluctant to do anything, at least until the case has actually been adjudicated in a court of law, because of the problems of the laws of libel.

Mr. HOLTZMAN. May I ask the witness a question? These newspapers, and so forth, and radio stations, even though they sometimes editorialize and point up the problem, simultaneously print the tout sheets and the prices and write stories about what is going on. So it seems to be an inconsistent position, wouldn't you say?

Mr. STRATTON. Well, I think what the gentleman has said about what the newspapers print is correct. I am not criticizing the newspapers. I am addressing myself to the question of legislation. I don't think that we can assume that our responsibility should be passed on to somebody else.

Mr. McCULLOCH. Mr. Chairman, I should like to comment at this place by reason of the fact that I started this general trend of thought. I am not advocating that we abdicate our responsibilities in this field. I think we should assume our responsibilities but I also think they should be assumed at the local level; and I think by reason of the attributes of the press and the news media, that there is a duty on them as well in this field. That goes for the grand jury and the trial judge and the district attorneys who, at least to some extent in some jurisdictions, have not been discharging their duties.

Mr. STRATTON. I couldn't agree more with the gentleman from Ohio.

Mr. McCULLOCH. I am willing to assume my responsibility in this field, and I hope that those in the local fields do as much.

Mr. STRATTON. I agree with the gentleman completely. Let me just say that the crusading newspaper is perhaps all too infrequent, but there are notable exceptions.

Mr. Chairman, I might just say, for example, that it has been my experience that these operations do extend across State lines. For example, as mayor of Schenectady, I once had occasion personally to raid a dice game that was in operation about one block away from the

Schenectady city hall on a Sunday morning after the city manager had assured me that there was no vice in our city. We found participants there from as far away as the State of New Jersey. There is no question about the fact that these operations are conducted across State lines.

I am also a little disturbed, Mr. Chairman, by those who feel that any attempt to crack down in this field or to tighten the resources at our command for dealing with this are going to interfere with individual liberties or rights. I am always a little bit disturbed by this.

I remember, for example, in one investigation which I conducted as mayor of the city of Schenectady, that we may have established something of a record because one of the gentlemen who testified before me took the fifth amendment 275 times when he was asked whether he had ever paid for protection or had ever been engaged in illicit or illegal gambling activities.

So I feel very strongly that dealing with crime is an area in which the Federal Government should help the local and the State governments, and it is my feeling that the legislation which I have recommended which would bring the Federal Government in by virtue of operations in interstate commerce—and I believe my bill is probably closer to H.R. 6517 than it is to H.R. 6572; but in effect it deals with communications in interstate commerce and it deals with transportation of paraphernalia in interstate commerce.

The CHAIRMAN. Let's go back to this fellow who took the fifth amendment. Would you want to repeal the fifth amendment?

Mr. STRATTON. I am not addressing myself to that subject, Mr. Chairman.

The CHAIRMAN. Let me ask you this: Do you object to a man availing himself of his constitutional rights? No matter how harsh it may be in effect—

Mr. STRATTON. I find it hard to be any more sympathetic, Mr. Chairman, with someone who takes the fifth amendment 275 times when he is asked whether he has ever paid a government official to conduct illegal gambling operations than I am sympathetic with somebody who takes the fifth amendment when he is asked if he is a Communist.

The CHAIRMAN. What difference does it make if it is 200 times or once?

Mr. STRATTON. As I say, Mr. Chairman, I find 275 times—I find it as hard to be sympathetic with that kind of an individual as with one who takes the fifth amendment when he is asked if he is a Communist.

The CHAIRMAN. I could ask the same question a dozen times or two times, and a man could take the fifth amendment; but it is only one question really involved.

Mr. HOLTZMAN. Mr. Chairman, may I ask a question?

The CHAIRMAN. I don't see that at all, sir.

Mr. HOLTZMAN. Mr. Chairman, may I ask a question along the lines you have been discussing?

The CHAIRMAN. Yes.

Mr. HOLTZMAN. I would like to ask our colleague from New York, first, whether he is in essence saying that, short of any abridgement of the civil liberties of any individual, he would very much like to see Federal laws strengthening the localities and States?

Mr. STRATTON. Yes, indeed. I might say to the gentleman from New York, Mr. Holtzman, that my bill is certainly not unconstitutional. On the contrary, I wouldn't have proposed it if I thought that it was. My proposal is that we take steps at the Federal level, but within the Constitution, of course, to deal with this problem.

Mr. HOLTZMAN. That was my impression of the gentleman's testimony. I am glad that the record reflects it.

Mr. STRATTON. I thank the gentleman for his question. I simply said that I find it hard to shed tears for these individuals, which I gather that some witnesses have done, although I am certainly not suggesting that in that process we ought to repeal their constitutional rights, not at all.

Mr. HOLTZMAN. I think that clears up the record very well.

Mr. STRATTON. I simply want to add this, Mr. Chairman, that I do feel that the evidence is ample that these gambling operations do proceed across State lines. I think that we do need to have additional Federal legal support for the effort to wipe them out. I think that we have found that the fact that they cross State lines has uncovered a loophole which the administration's proposals and mine are now designed to close. I feel very strongly—in view of such events as Appalachen, which occurred in my State and your State, Mr. Chairman, and where it appeared that racketeers can defy established government and get away with it, that we do need stronger weapons to deal with the problem.

May I just say, too, Mr. Chairman, although I am not a lawyer—and I think the gentleman from Florida, Mr. Cramer, raised it earlier—that perhaps the phraseology of my bill might meet some of the questions that have been raised, because mine is addressed to those who conspire to commit any "organized crime offense," which is defined as any offense "proscribed by the laws of or the common law as recognized in any State relating to gambling, narcotics, extortion, intoxicating liquor, prostitution, criminal fraud, or false pretenses, or murder, maiming, or assault with intent to inflict great bodily harm, and punishable by imprisonment in a penitentiary or by death."

In other words, it doesn't get into this problem of organized business which has been raised earlier in today's hearings.

Mr. CRAMER. Would the gentleman yield?

Mr. STRATTON. I will be glad to.

Mr. CRAMER. For the gentleman's information, of course, my title 2 of 6909 and the subsequent title on travel in interstate commerce, for the information of the committee, are a little more restricted actually than your definition.

This definition which you have is similar to the definition which I offered in the bill I introduced in 1959. I have now substituted my new definition of syndicated crime.

So, for the information of the committee, this definition is actually much broader than the one that is contained in 6909.

Mr. STRATTON. I thank the gentleman. And, as I say, Mr. Chairman—

Mr. CRAMER. It approaches it from the same standpoint.

Mr. STRATTON. I am not a lawyer, and I am afraid I couldn't advise the committee even if I dared to on these questions which have been discussed previously. But I am in support of legislation of this kind and very strongly urge its adoption.

The CHAIRMAN. Lawyer or no lawyer, we always welcome your statements.

Mr. STRATTON. Thank you, Mr. Chairman.

The CHAIRMAN. Your remarks always have cogency and merit. Are there any other witnesses?

If not, the committee will recess until tomorrow morning at 9:30.

(Thereupon, at 3:32 p.m., the committee recessed, to reconvene Thursday morning, 9:30 a.m., May 18, 1961.)

# LEGISLATION RELATING TO ORGANIZED CRIME

THURSDAY, MAY 18, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE No. 5 OF THE  
COMMITTEE ON THE JUDICIARY  
*Washington, D.C.*

The subcommittee met at 9:50 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Members present: Representatives Celler, Rogers, Holtzman, Toll, and McCulloch.

Also present: William R. Foley, general counsel; Richard C. Peet and William H. Crabtree, associate counsel.

The CHAIRMAN. The committee will come to order.

I have a letter, which I will ask to be inserted into the record, from Mr. Herbert Wechsler, of the School of Law of Columbia University, dated May 15, 1961, to me as chairman of the committee regarding his views of this legislation.

(The letter is as follows:)

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,  
SCHOOL OF LAW,  
*New York, N.Y., May 15, 1961.*

HON. EMANUEL CELLER,  
*Chairman, Committee on Judiciary,  
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN CELLER: Thank you for your letter of May 9 and your kind invitation to appear before Subcommittee No. 5 on the crime bills you were good enough to call to my attention.

I have examined the bills and find that, on the whole, they represent what I believe to be an uncritical and poorly defined extension of the Federal criminal law, without proper safeguards against double prosecution in the cases where the proposed Federal offense is merely supplementary to a State crime. In saying this, I do not mean to express hostility to extending Federal jurisdiction where it is desirable to do so, especially in dealing with organized crime. My point is rather that I think it should be possible to define distinctive Federal offenses with clarity and precision or, alternatively, to limit Federal action to the creation of a Federal jurisdiction which, when exercised by instituting prosecution, would be preemptive of State prosecution for the same crime.

Prof. Louis Schwartz of the University of Pennsylvania, my colleague in the drafting of the Model Penal Code, is preparing an analysis along these lines for the subcommittee, which I understand he has made arrangements to present during the hearings later on this week. Under the circumstances, I shall not burden you with a detailed statement of my views; nor shall I ask to be heard by the subcommittee, since my testimony would very largely duplicate that which you will hear from Mr. Schwartz.

With cordial regards, I am,

Faithfully,

HERBERT WECHSLER.

The CHAIRMAN. Our first witness this morning is our colleague from Florida, Congressman William C. Cramer. We will be glad to hear from you.

**STATEMENT OF HON. WILLIAM C. CRAMER, A MEMBER OF CONGRESS FROM THE FIRST DISTRICT OF FLORIDA**

Mr. CRAMER. Thank you very much, Mr. Chairman. I will make my remarks as brief as possible. They will be directed largely to the omnibus bill which was introduced recently—H.R. 6909; and to other bills which I introduced prior thereto, which are incorporated in 6909.

Mr. Chairman, I have felt for some time the seriousness of this problem, largely because of the situation I have in my own district involving some 22 unsolved murders in the last 30 years, one of which occurred just a year or so ago in the shooting of Benny Lazera in a gangland style murder. A sawed-off shotgun blew his head off right in the presence of his wife as he was coming into the driveway of his home and getting out of his automobile.

That is the type of cruelty, extreme cruelty, and unconscionable act on the part of those involved in organized crime. In this instance the question of who was going to control the bolita racket was the suspected motive. The killings which have taken place in my district during this period of time have largely involved the numbers racket and the bolita racket.

Mr. McCULLOCH. Mr. Chairman, I would like to ask a question there. Have the local law enforcement authorities invited the FBI to come in to investigate those conditions?

Mr. CRAMER. They have, I say to the distinguished ranking minority member, Mr. McCulloch. They have made requests previously, as I have advised this committee. As a matter of fact, I have here copies of letters submitted to the Attorney General from Gov. Dan McCarty dated August 17, 1953 and from Ed Blackburn, sheriff, dated August 12, 1953, asking for help from the FBI in which it is stated:

I am writing to you in reference to the Sicilian crime syndicate commonly known as the Mafia. We believe this group operates on a nationwide scale and probably on an international basis. At the local level of law enforcement, we are tremendously handicapped because we lack the necessary contacts in other cities and States to successfully decipher their depredations. This group is known to deal in narcotics, gambling, murder, and the whole sordid array of crimes for profit.

Sheriff Blackburn very frankly states they are unable to cope with the situation and asks for the help of the FBI. I would like that correspondence to become a part of the record.

Likewise, the letter to the Attorney General from Dan McCarty, Governor of the State of Florida, I would like to become a part of the record, as well as the reply of the Justice Department in which it was said:

There is no crime involved, and therefore we cannot permit the FBI to come in.

Since that time I have had numerous discussions with the Department on this matter and correspondence, and have been advised that under the Fugitive Felon Act, which is the only possibility of jurisdiction in this type of case, the FBI cannot come in to assist in

investigations to determine who the suspect is, even on request of local authorities.

If there is a known suspect and there is a belief that a crime has been committed and that interstate commerce is involved, specifically as defined within the limited crimes under the Fugitive Felon Act, then the Justice Department can come in.

That is one of the justifications for broadening the Fugitive Felon Act as proposed by the gentleman from Ohio and as passed by the House last session. That is the reason for incorporating such a provision in the omnibus bill which I introduced so that where there is a known suspect, the FBI will be able to help.

Then, of course, we have the problem of no known suspect. That is the real problem area. In all these murders which I have adverted to there were no known suspects.

Mr. FOLEY. Mr. Cramer, right there: In this case you are talking about, there was no known suspect, was there?

Mr. CRAMER. Correct. That is why there is no relief.

Mr. FOLEY. So, therefore, without any evidence of a fugitive felon violation, it was strictly a local matter. It could have been done by a local person, couldn't it?

Mr. CRAMER. Yes. But the local law enforcement authorities certified to the Attorney General—and that is why title II is in my bill on terroristic offenses; that is why the travel in interstate commerce is in my bill in that form—that on request of the local law enforcement authorities, the Attorney General can come in where local authorities certify or state that they believe interstate commerce is involved, or the Mafia or Murder, Inc.

Mr. FOLEY. In this case you are talking about, there was no evidence one way or the other?

Mr. CRAMER. Oh, yes.

Mr. FOLEY. They had evidence that there was an out-of-town person?

Mr. CRAMER. The local law enforcement officials certified in writing to the Attorney General that they believed it was Mafia, Inc.

Mr. FOLEY. I am not talking about what they believed. What was the evidence? Do you know?

Mr. CRAMER. I only know what they certified to the Attorney General. Of course there was involved in the past history a pattern or practice with which he was fully familiar. Obviously that was the basis of the information on which he certified this was the same as the other killings.

We believe Mafia was involved before. We think the killer was shipped in and shipped out. We want you to help us investigate them.

What could possibly be the justification for not permitting the FBI to come in on request? We did it in the 1957 civil rights bill. The Attorney General, as a matter of fact, said that in civil right cases he was going to go in contrary to the established policies under the Fugitive Felon Act, as previously established in bombing cases.

I introduced one of those bills. I think the approach is sound. Likewise I think it is sound in criminal cases involving organized crime where there are acts of violence involved. That is the manner in which my bill treats such offenses.

The CHAIRMAN. Your documents that you mentioned will be received in the record.

(The two letters are as follows:)

LETTER FROM ED BLACKBURN, JR., SHERIFF, HILLSBOROUGH COUNTY, TAMPA, FLA.,  
TO U.S. ATTORNEY GENERAL, DATED AUGUST 12, 1953

I am writing you in reference to the Sicilian crime syndicate commonly known as the mafia.

We believe this group operates on a nationwide scale and probably on an international basis. At the local level of law enforcement, we are tremendously handicapped because we lack the necessary contacts in other cities and States to successfully decipher their depredations. This group is known to deal in narcotics, gambling, murder, and the whole sordid array of crimes for profit.

We have had a large number of gangland murders and attempted murders, and in a number of these, we feel that the assassins were imported.

It would seem to be that the mafia should be put on the same subversive basis as the Communist fronts and the Klu Klux Klan, in that all of these groups commonly place themselves above the law, brutally enforcing their own codes and that they should definitely be classified as an organization dedicated to un-American activities and thus come within the scope of the Federal Bureau of Investigation.

In our town they have instilled an unholy fear in the hearts of many good citizens whose lips have been subsequently sealed.

Very frankly, we need help, and I earnestly solicit whatever assistance that you might give.

I should be glad to come to Washington to discuss this with you if you think that the course that I have suggested might be feasible, or if I could be of help in any way.

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LETTER FROM GOVERNOR OF FLORIDA, DAN MCCARTY, DATED AUGUST 17, 1953, TO  
U.S. ATTORNEY GENERAL

Since my inauguration as Governor I have directed special attention to the proper enforcement of Florida's laws. I have diligently sought the cooperation of all law enforcement officials of the State, particularly the sheriffs of the respective counties.

In Hillsborough County (Tampa area) Sheriff Ed Blackburn has accorded this office splendid cooperation in our efforts to handle the many problems peculiar to this area. Sheriff Blackburn is intimately familiar with the many complicated aspects of law enforcement in the Tampa area. He has advised me that he is seeking to have the mafia placed on the list of un-American activities and that he is seeking Federal assistance in controlling interstate aspects of mafia's operation.

I know that Sheriff Blackburn is doing everything possible to control the situation in his own county and I shall appreciate anything that you can do to assist him in more effectively seeking to eliminate this particular crime syndicate.

Mr. CRAMER. Therefore, I believe, having introduced these bills previously and following up with the introduction of the recommendations of the Attorney General last session—Attorney General Rogers—which have been improved upon and expanded this session, that Congress must act.

Attorney General Kennedy's recommendations are very similar to those of Attorney General Rogers. In some instances they are considerably weaker, in my opinion, than those of Attorney General Rogers. For instance, Attorney General Rogers recommended six bills this session, four of which he recommended last session and which I introduced.

Those which he recommends this session are, first, to prohibit the transmission of gambling information in interstate commerce by communications facilities. That proposal was contained last session in H.R. 11890, by myself, and this session, in H.R. 3022, by myself. That is, it is a statute of a similar nature.

Also, it is included in the bill by Senator Wiley from the other body. Likewise, one of our colleagues on this committee, Mr. Miller of New York, has introduced a similar bill. The Senator's bill is S. 528, which I also submit for the record. It embodies exactly the recommendation of the Attorney General on this matter. Of course, the significance of it is that it goes much further than the Attorney General's approach. In other words, it involves a principle that is not contained in Attorney General Kennedy's approach. Attorney General Kennedy's approach is that the use of communication facilities for gambling purposes is illegal.

The proposal of the previous Attorney General, Mr. Rogers, as incorporated in these bills, goes much further and might better accomplish the job.

As I indicated in my questions to the Attorney General, I don't think his proposal will adequately do the job. I think it is too weak because there is no way of carrying it out, in my opinion. That is why the wiretapping section is included in H.R. 6909, so that there will be some way the Attorney General can enforce this communications provision.

The wiretapping section is limited strictly to syndicated crime activities, which are defined in H.R. 6909. You will note the definition of syndicated crime in that omnibus bill. Syndicated crime shall be deemed to mean—

substantial concerted activities in or affecting interstate or foreign commerce, where any part of such activities involves violations of law, Federal or non-Federal.

Such a broad based approach to the problem is similar to the approach of the antitrust laws.

The broad based definition of syndicated crime is, therefore, somewhat similar to the broadbased approach contained in the antitrust laws. As a matter of fact, the language, "substantial concerted activity," is antitrust-type language. So there is precedent for this type of definition.

I was interested in the chairman's concern in interrogating the Attorney General as to the definitions contained in some of the proposals that were made by him. I likewise am concerned and feel that perhaps this alternative is a sounder approach.

As the chairman will note, that approach is contained in those titles throughout my bill where it is applicable. It is not obviously applicable to all of them. I will discuss the approach in detail in just a moment.

But Attorney General Rogers this year recommended my communications approach. I believe the proposal by the present Attorney General by just making it illegal to use such facilities will not do the job. The problem with the approach of the Attorney General now is there is nobody to enforce it. Attorney General Rogers' approach was that any common carrier subject to the jurisdiction of the FCC, when it is notified in writing by the local law enforcement officials that these communications are being used for these illegal gangster purposes, shall have the power to discontinue the use. So there we have a way of enforcing it.

But under the proposal made by the Attorney General, I don't see how it can be effective.

Mr. HOLTZMAN. Will the gentleman yield? Would the General Electric-Westinghouse cases come up under the gentleman's definition of syndicated crime? Could it have been prosecuted under the gentleman's bill, if enacted, as a Federal offense?

Mr. CRAMER. If it is a substantial, concerted activity affecting interstate or foreign commerce where any part of such activities involve violations of law, Federal or non-Federal, yes.

Mr. FOLEY. It would be covered, wouldn't it?

Mr. CRAMER. I would think it would; yes.

Mr. FOLEY. They pleaded guilty to violating a Federal law, which is a criminal violation of the Sherman Act. Obviously there was concerted activity affecting interstate commerce—a violation of Federal law. Under the definition, would they be covered?

Mr. CRAMER. Yes. But the whole concept of this approach is as it is related to syndicated criminal activities.

Mr. FOLEY. As defined.

Mr. CRAMER. And its application to specific sections relates to syndicated criminal activities. It may be that the definition as used would require further refinement in order to make certain it is limited to criminal activities.

The question of the gentleman is a good one. The definition probably does need refinement. I have no pride of authorship that would not permit such refinement.

The CHAIRMAN. Would this cover the activities of the Ku Klux Klan or the White Citizens' Council? Would that be substantial to say "activities affecting interstate or foreign commerce or involve violations of law, Federal or non-Federal"?

Mr. CRAMER. Let me say I would have no objection to legislation outlawing the Ku Klux Klan or antilynching legislation.

The CHAIRMAN. What about the White Citizens' Council?

Mr. CRAMER. I don't know whether proper constitutional jurisdiction would exist to outlaw it. Certainly it isn't a matter that is intended to be covered by an antiracketeering bill. My approach, throughout the bill, is to get at syndicated crime. The objectives of the Office on Syndicated Crime are quite obvious—to fight syndicated crimes. The definitions contained are for that purpose, for the accumulation of information to fight known gangsters and syndicated criminal activities.

The purpose of the definition was to circumscribe or to provide a definition that would broadly spell out the areas in which it would be applicable.

Mr. McCULLOCH. May I interrupt the witness at that point? Is this an oversimplification of what you have in mind, or is it about what you have in mind? I am referring to our law school days when we discussed activities before we proscribed them in two categories. My Latin is very poor—*malum in se*—something that is wrong in itself—the other division being something that isn't necessarily wrong in itself, something that is prohibited by statute.

Do you remember those two divisions of proscribed activities, *malum in se* and *malum prohibitum*? It isn't impossible to refine the definitions here so that we are not making subject to this act certain activities that are not wrong in themselves, is it?

Mr. CRAMER. I will say to the distinguished gentleman that he has put his finger on precisely what we are attempting to get at. That

is why the terroristic offense was included. It is a suggestion to the committee for purposes of thought in order to make certain that, although the entire concept of the act is directed to syndicated criminal activities, it may be properly limited. The committee may consider redefining "syndicated crime" as "shall be deemed to mean substantial concerted organized criminal activities" or something of that sort that would limit it to the concept that we are trying to get at.

MR. TOLL. Will the gentleman yield? Is it your interpretation that laws prohibiting gangland activities are merely *malum prohibitum*?

MR. McCULLOCH. It all depends on what is involved. I think there is a general recognition of things that are wrong in themselves, that we needn't have a law to say that they are wrong. They have been wrong all down through civilized history.

MR. TOLL. Does that apply to gambling?

MR. McCULLOCH. I don't know. It all depends on what is involved in the gambling. If a part of the organized gambling activity is murder and such things, then it well could be wrong—wrong morally, wrong in every approach, not relating to the statutes.

MR. HOLTZMAN. It would be very difficult to break this down because if you follow the thinking of the gentleman from Ohio, then we would have to say that price fixing, *per se*, may not be bad; but if it involves the bribery of public officials, then it becomes *malum in se*. Then you get so deeply involved in your definition that we are no longer simplifying, but we are compounding our problem, I think.

MR. McCULLOCH. Mr. Chairman, I have this to say. I believe that it is within the ability of members of this committee and the staff to write definitions that are workable. If I may comment on the example given, he is thinking about a course of action that is a double offense. Bribery was an offense of the common law. The other offense that my distinguished and able colleague speaks about is an offense that did not become an offense in America until the Sherman Act was passed.

MR. HOLTZMAN. Like gambling and the murder that follows the gambling. There is no difference in the example.

MR. CRAMER. Mr. Chairman, may I finish my statement and then I will be glad to answer any questions? There are some points I would like to get into the record. Then I would be delighted to answer any questions the chairman wishes.

THE CHAIRMAN. Except at this point I just want to clear something on this. We are talking about this particular section. I am turning to page 5, subdivision 2. I will read it.

Notwithstanding the provisions of paragraph (1) of this subsection, the Attorney General may use such Federal means as he considers necessary to enforce the provisions of this section where any violation or violations of this section obstruct the execution of other laws of the United States or impede the course of justice under those laws, or upon a request of a duly authorized State or local official, when in such official's opinion any local law enforcement officials of the State fail or refuse to enforce violations of State law, which are also violations of this section—

it strikes me that the sting is in the tail in the very last words after the word "when."

That which precedes "when" cannot take effect unless a local official gives it as his opinion that the local enforcement provisions or facilities have broken down or are not being properly used.

The effect of that might be that in civil rights cases in certain States the local authorities may give such an opinion as to prevent the carrying out of the rest of the provisions of that section.

Mr. CRAMER. I don't see where this section has any relationship to civil rights. The crime involved is defined on page 4. "Terroristic offense" means an offense proscribed by the laws of or common laws recognized in any State relating to extortion, blackmail, murder, racketeering, narcotics, maiming or assault or intent to inflict great bodily harm.

The CHAIRMAN. Take the bombing case the other day in Alabama, when they threw a bomb into a bus. You used words on page 4, "maim and assault." That may mean if a local official says, "We can handle this thing; we don't want any outside interference by the FBI" that that is the end of it. You speak of an official's opinion.

Mr. CRAMER. The chairman is fully familiar with the Anti-Bombing Act that was passed by Congress, which I think would be controlling in that situation. This is certainly not an attempt to circumscribe any existing statutes as they relate to the existing laws concerning bodily harm.

The CHAIRMAN. You may not have that intention, but the effect may be that.

Mr. CRAMER. I don't see how it could possibly be construed to accomplish that.

The CHAIRMAN. I must respectfully disagree with you. I think you ought to look over those words again.

Mr. CRAMER. It is my intention to do so. The language is intended to relate to these types of terroristic crimes involved in syndicated criminal activities that result in maiming or murder, and it may be that to clarify it the phrase "both murder and intent to inflict great bodily harm" could be removed from the paragraph under subsection (a) in that it is referred to under subsection (b) without doing any substantive violence whatsoever. This might help clarify the point the gentleman has made, in that subparagraph (b) involves the use of violence which is the thing we want to prohibit principally.

The CHAIRMAN. I don't doubt the gentleman's sincerity. But, after all, you know it is our duty to check on the language used as to how far reaching it may or may not be.

Mr. CRAMER. Yes, certainly. As a matter of fact, it was my intention to give greater scope of authority to the local authorities within the proper definition of "terroristic offense" to permit them—if, for instance, the attorney general of the State felt the local sheriff wasn't doing his job, or the Governor, or he himself didn't have the authority to do anything about it in the sense of getting at the crime involved, then he could ask—if this terroristic offense was involved—the Attorney General to help him.

Certainly the chairman would want him to have that authority because the chairman has consistently taken the position, as I understand it, that where the local authorities refuse to do the job, somebody should be available to do it for them. That is what this intends to do.

It is suggested, of course, and it is obvious from this entire omnibus bill and the sections contained therein, that I am devotedly interested in attacking this problem. With reference to terminology, to draftsmanship, I am desirous and willing to sit down with the staff

and the subcommittee to work out any problems that may be found to exist in the legislation.

With regard to Attorney General Rogers' recommendations, returning to that, his second recommendation was to provide means for the Federal Government to combat interstate shipments of wagering paraphernalia. That, of course, was a new approach at this session of Congress and is contained in the distinguished chairman's bill and the bill which I introduced, H.R. 3248.

Proposal 3 by the Attorney General was to amend the Fugitive Felon Act, which of course is contained in the gentleman's bill H.R. 468 by Mr. McCulloch, from Ohio; my own bill, H.R. 3023; and in the bill which this committee voted out last session.

The fourth proposal by Attorney General Rogers related to criminal expenditures. It was also introduced in the last session of Congress. It is contained as title III of my proposal.

This is a very simple proposition. Treasury has reported favorably last session on the bill I introduced relative to criminal expenditures. Its purpose, quite simply, is to prevent criminals from deducting as business expenses their operating costs.

The problem resulted from the decision of *Commissioner v. Sullivan*, 356 U.S. 27, which authorized racketeers to deduct business expenses, even though their business is an illegal one.

Again I am sure the committee would want to get testimony from the Treasury Department. The Attorney General previously recommended it. Attorney General Kennedy recommended it. It is contained in the proposal which I have submitted for the consideration of the committee.

I think that the committee should consider this proposal in my omnibus bill. It is possible likewise that the Ways and Means Committee could be consulted, as was done in the Highway Act. The Public Works and Ways and Means Committees worked together in getting the bill out agreeable. Public works finally reported it out. I see no reason why this section, which I think is needed if we are to launch an effective anticrime drive, should wait indefinitely for consideration by the Congress.

MR. MCCULLOCH. Mr. Chairman, I would like to make a comment there. I am very happy that our colleague has discussed this title. I think this one—to use an over-used phrase—gets at the jugular vein. I hope that we get to it quickly.

MR. CRAMER. It makes absolutely no sense to me that someone who is involved in an illegal business can deduct from his income taxes the cost of operating that business. The Attorney General doesn't think so. The previous Attorney General didn't think so. Internal Revenue doesn't think so. It is a noncontroversial matter, and I don't see any reason why this committee shouldn't consider it, along with other proposals.

Let me say this further. If this committee seriously considers the proposal of Mr. Miller and the proposal of Senator Wiley and the proposal as contained in my bill on communications—then, of course, it can be argued that we are taking the jurisdiction of the Interstate and Foreign Commerce Committee away.

That is not the issue. In the civil rights bill we took away the jurisdiction of the Education and Labor Committee. There was no question about it. We did it because we thought it was necessary.

So far as I am concerned, it is equally necessary in this organized crime field that we go ahead and do the job that should be done. That is why this is introduced—my bill—as an omnibus bill.

The further support comes from the fact that the Attorney General himself has made each one of these recommendations. They came from his office. Therefore that gives us, I think, some semblance of jurisdiction to consider them in the form of an omnibus crime bill, which is what I have proposed.

The fifth proposal by the Attorney General related to immunity from prosecution. It was introduced by me last session as H.R. 7392. It was introduced this session as H.R. 3021. I think the chairman and the committee are fully familiar with it. The Attorney General last session recommended it. The Attorney General this session recommended it. It arises as a result of the conflict under the Hobbs Act and the Labor Act—the Taft-Hartley Act—and the inability to get prosecutive evidence under either one of them.

My immunity is a limited one. The court must approve the decision as to whether immunity should be granted. Therefore, I think the rights of the parties are very closely, very carefully protected.

I think this is a sound proposal. It is certainly something that this committee should give thorough consideration to.

The only form in which it is before the subcommittee is H.R. 6909.

Mr. FOLEY. And your own.

Mr. CRAMER. And the bill which I proposed, the individual bill, H.R. 3021, which I just mentioned. This, I think, is something that the committee should give serious consideration to.

Mr. FOLEY. On that point, Mr. Cramer, actually it would be a fact, would it not, that every violation of the Hobbs Anti-Racketeering Act, and of that section of Taft-Hartley involving, in effect, bribery—that it is what it is—

Mr. CRAMER. Extortion or bribery.

Mr. FOLEY. It is the payment to a representative of the employee under the Taft-Hartley Act; there is no extortion involved. It is pure bribery.

Mr. CRAMER. Under Taft-Hartley, yes.

Mr. FOLEY. That would be a violation of every State law, would it not, the extortion, the assault, plus bribery? Every one of those that would constitute a violation of the Hobbs Act and the Taft-Hartley Act would also be a violation of a State law, would it not?

Mr. CRAMER. I would assume so, yes.

Mr. FOLEY. I think everybody assumes that.

Mr. CRAMER. Yes.

Mr. FOLEY. Under this proposal and the ruling of the Supreme Court, a grant of immunity by the Federal Government would also be a grant of immunity against a State prosecution, would it not?

Mr. CRAMER. That may be in the limitation in our proposal.

Mr. McCULLOCH. Mr. Chairman, I would like to ask counsel a question in that connection. Would that necessarily follow if by legislation we provided that immunity would not be granted so far as a State offense—

Mr. FOLEY. Mr. McCulloch, that raises the very same question that was raised back in 1953 when we passed the immunity statute. Our problem was this, that the court has always said that any grant of

immunity by legislation must equate the constitutional privilege and protection against self-incrimination.

When we passed the Immunity Act, we said that, if the court felt that this grant had to protect a person under compelled testimony from depriving himself of his constitutional privileges under State as well as Federal that it was meant to do that—to meet the constitutional requirement.

I don't know what the court would rule if we made the exemption. But if we made the exemption and the court still maintained that this compulsion should protect against State, the statute would have to fall.

Mr. CRAMER. The objective of this is to get the small fry to testify against the big boys.

Mr. FOLEY. Obviously.

Mr. CRAMER. That is the objective. But this specifically is limited in requiring a request by the Attorney General approved by the courts.

If the order is issued and immunity is granted, it is applicable to what courts—any court?

Mr. FOLEY. It is applicable to any, growing out of that testimony. It doesn't make any difference what forum—

Mr. CRAMER. Right. It specifically so states on page 18, line 16: so compelled to be used as evidence in any criminal proceeding against him in any court.

Mr. FOLEY. The Supreme Court had ruled prior to 1953 in *Adams v. Maryland* on the statute—that is, the use of the testimony as evidence. This isn't the question of that. This is a question of I talked to a Federal agent and that same evidence that I give that Federal agent may incriminate me under the State statute. Am I protected?

That is the issue—not the use of the testimony, the immunity. You can't even prosecute.

Mr. CRAMER. The immunity has to be conferred by the court. If there is a risk involved in the statute, isn't the defense counsel going to raise the point before the court and the court is going to have to make that determination at the time it hears the other question?

Mr. FOLEY. The question here is, though: Is the grant of immunity by the Federal Government a grant of immunity against a State prosecution?

Mr. CRAMER. Yes; I don't see any other conclusion. I have no objection to that construction of it.

Mr. FOLEY. I just wanted to make sure we had the record clear.

Mr. CRAMER. Yes. I think it is essential that this section be included. The sixth recommendation of the Attorney General related to gambling devices in interstate and foreign commerce, which is also included in my bill as title V of H.R. 6909. It was introduced last session as H.R. 7393.

Let me just take a minute to discuss those sections of my bill that were not recommended by the Attorney General. They are the basis for my saying that I don't think the present Attorney General has gone nearly far enough. I don't think the previous Attorney General went nearly far enough. As a matter of fact, the Attorney General this session—Attorney General Kennedy—has proposed weakening some of the sections, some of the proposals, including that of communications,

just making the use of communications a crime without sufficient teeth in it—without any way of detecting whether it is being violated, such as the wiretapping provision contained in my bill; or such as the proposal by Attorney General Rogers to the effect that the companies themselves, communications companies, if they are advised by the local law enforcement officials that these communications are being used by these people, these criminals involved in organized crime, then they have the duty to withhold those communications.

That isn't in Attorney General Kennedy's proposal. I don't know how in the world he is ever going to have his proposal carried out or how it is ever going to be effective. So I say that that proposal is far too weak to do any good.

If you compare that proposal with the one contained in my bill, you will see that my bill offers another alternative to the committee. I am convinced that the Attorney General's proposal is not strong enough as it relates to the use of communications.

The proposal I have in title IV is, in effect, a registration statute requiring anyone who registers under the gambling stamp provisions of the Internal Revenue Code to also file an affidavit that he hasn't in the past and will not in the future use communications facilities for the purpose of transmitting gambling information.

That is an alternative approach that I would like to have the subcommittee consider. To me, I think the approach is a sound one.

In addition to that, to tighten this thing up—because this is where the really serious problem exists, as the Attorney General testified, in the use of communications facilities—to tighten this thing up, we have added the wiretapping section under the recommendations of the Attorney General, following his recommendations, patterned after the bill that the distinguished chairman of this committee introduced last session of Congress—H.R. 70. Title IX would authorize the issuance, under strict court supervision, on application of the Attorney General, a specific court order that in a given instance, under given acts, if the Attorney General has reason to believe that Mr. X is involved in syndicated criminal activities, the court can issue an order permitting a wiretap of that individual's line under strict court supervision and proper secrecy.

The wiretapping section is limited to syndicated criminal activities, intentionally so.

Now, the chairman has said, and I agree, that wiretapping generally is a controversial issue. But I see no reason why it should be controversial when the application of the wiretapping section is under strict court supervision and is related solely to helping stamp out this \$22 billion illicit syndicated criminal activity that the Attorney General testified to yesterday.

I am sure the chairman is familiar with the constitutional questions involved—unreasonable search and seizure. It is not unconstitutional for Congress to enact legislation authorizing reasonable wiretaps and this bill is within that concept in my opinion.

Admittedly, there is some burden on the communications facilities, and the committee might wish to consider title IV of my bill as it relates to the transmission of gambling information, as appears at the bottom of page 9. I realize there is likely to be some objection on the part of the communications facilities—telephone, telegraph, and so forth—in requiring them to render some function in this matter.

Frankly, I don't know how a communications provision can be effective if companies aren't required to do something to help make it effective, whether it is the proposal made by Attorney General Rogers previously, or whether it follows this concept. But this again is an alternative the subcommittee, I think, should give consideration to.

Mr. FOLEY. Mr. Cramer, on that very point, on page 8, line 21, you used the words "intentional or does not intend" relating to the affidavit.

I could make an affidavit and be truthful that I don't intend to do it; yet 3 weeks from now I could change my mind. Wouldn't it be better to use some other language, that he will not?

Mr. CRAMER. If he changes his mind—page 9, line 33, requires him to file with the Attorney General a statement that he has changed his mind. That is a draftsmanship question. I think the objective of what I am trying to get at is obvious.

In other words, as far as I am concerned, any draftsmanship problems the committee should determine. I want the objectives. I am interested in the big ends, the results. That is why the bill was introduced in this form.

Let me discuss briefly those sections of my proposal which were not contained in any other recommendations before the committee, in addition to the ones that I have already discussed. Title I is the principal title in that category.

With regard to title I, it establishes the Office on Syndicated Crime operating under the strict control of the Attorney General. That is the objective of it—operating under the strict control of the Attorney General. It would serve as the nerve-center for a coordinated war on racketeering.

We had Professor Schwartz here yesterday afternoon. He is an authority on this subject. His statement was:

Here is the shortcoming—there is not a correlation of information.

You have got numerous agencies in the Federal Government which are involved in investigative activities. I have placed a list of them in the Record. They were contained in the Milton Wessel report submitted to the previous Attorney General—his special assistant—on this subject. Here is a list of them. You can see the length of it. It is contained in the Congressional Record, page 7170, departments that have investigative authorities.

The problem fundamentally is this, and this is why I am concerned about it. If a local law enforcement official asks for information on Mr. X—for instance, this guy who was killed in my district recently, Benny Lazera, in a gangland style murder, sawed-off shotgun—if the local sheriff or the local State's attorney should request information from the Department of Justice on Mr. Lazera, was he involved in syndicated criminal activities; the information presently available is limited.

There is no correlating office in the U.S. Government—it is a crime that there isn't, in my opinion—that would make available to this law enforcement official not only information that is in Justice and FBI, but Internal Revenue and in all other agencies that are of an investigative nature.

There are many such agencies. Why shouldn't the Federal Government facilitate the dissemination of such information? I think this would do as much as any other single thing in fighting organized

crime in America if the local officials were given some help. That is the whole concept of my bill: Help in information; help in investigation; and, where it is proper, help in prosecution.

That is the concept of my bill. That is why title I was set up in this bill to correlate information, to have a group within the Department of Justice which has the power to deal with this subject specifically and exclusively, because it is important enough to be dealt with on that basis, under the complete control of the Attorney General, working in cooperation with other executive agencies, correlating information and getting at these guys who otherwise in my opinion aren't going to be caught.

Mr. McCULLOCH. Mr. Chairman, I would like to ask the witness this question. Is my memory correct that either the President or the Attorney General has made some recommendations or has urged some action toward this end as sought to be implemented by title I of your bill?

Mr. CRAMER. I am sure the gentleman is familiar with the demands that were made a few months ago by the Attorney General and by the President for a crime commission. This is a long step, a crime commission. This is a baby step here in comparison. This doesn't involve the bugaboo of a Federal police force.

But now I understand the Attorney General, as he indicated, has abandoned that proposal of a crime commission on a national level. The concept of having a correlating agency, and this agency cannot only use Federal information and disseminate it to the States on request under supervision, but also it can take State information and assimilate it on a Federal level to help the Federal officers, which is equally important in my opinion.

So what this does is set up an elite corps which, incidentally, was similar to the recommendation of Milton Wessel in his report to the Attorney General last year, after a very exhaustive study had been made. I have a copy of his report here, and I would like to have it made a part of the record. In this report he discusses exactly the same thing.

I think if the subcommittee will study this report, they will find that it, in and of itself, is adequate justification for title I in this omnibus approach.

This, I think, is the most important single title of the bill which I introduced, to permit the Attorney General to set up a syndicated crime division or office under his strict supervision.

I gave a lot of thought to this and I made a lot of changes. I want strict supervision by the Attorney General over these activities, setting up strict rules and regulations relating to when any information might be made available to local law enforcement officials.

Mr. McCULLOCH. I would like to ask this question. Is the gentleman informed about the proposed elite task force or other group which has been set up or might be set up by the Attorney General which would have authority in any of the 50 States, and for which an appropriation is about to be made?

Mr. CRAMER. I understand, Mr. Chairman, that the Attorney General has submitted a request to the Appropriations Committee for hiring some lawyers to work in the investigative field. I don't know what that means. There is no circumscription in the appropriation bill itself that is under consideration as to how this force can be used.

It can be used for any purpose the Attorney General wants. I would hate to see the strength of that force dissipated and used in other areas. Here is where it is needed. This title I would, as a congressional statement of intent, require the Attorney General to use it for the purpose of getting rid of and stamping out organized crime.

That is where that elite force should be used. The purpose of title I is to make sure that the force is used for that purpose.

Of course, Mr. Chairman, here is the other problem: Let's assume he has 20 people who are elite antiracketeering people in his Department, as was Milton Wessel's group. He pointed out what the problems are without legislation or some authority.

What are some of those problems? They go to Internal Revenue and ask for information, and Internal Revenue says: "We are sorry; you don't have authority to get that information. This is our jurisdiction."

Or he goes to some other agency—the Federal Communications Commission or some other agency: "No, we can't give you that information. We are not authorized to give it under the law."

That is what this title is intended to avoid. It will give the Attorney General that authority and end these interdepartmental arguments with regards to availability of information on a limited basis.

The CHAIRMAN. The reference you have made to reports is important. Those reports, if you wish, will be placed in the record.

(The reports and S. 528 are as follows:)

[S. 528, 87th Cong., 1st sess.]

A BILL To prohibit transmission of certain gambling information in interstate and foreign commerce by communication facilities

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the purposes of this Act are to assist the various States, territories, and possessions of the United States, and the District of Columbia, in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses, and to aid in the suppression of organized gambling activities by prohibiting the use of or the leasing, furnishing, or maintaining of communication facilities which are or will be used for the transmission of certain gambling information in interstate and foreign commerce.

SEC. 2. As used in this Act, the term—

(a) "Communication facility" means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, and delivery of communications) used or useful in the transmission of writings, signs, signals, pictures, and sounds of all kinds by wire or radio or other like connection between points of origin and reception of such transmission.

(b) "Gambling information" means bets or wagers or related information assisting in the placing of bets or wagers on any sporting event or contest, or transactions or information facilitating betting or wagering activities on any such sporting event or contest. In connection with horseracing, gambling information includes among other things entries, scratches, jockeys, jockey changes, weights, probable winners, scheduled starting time of race, actual starting time of race, track conditions, the betting odds, changes in the betting odds, the post positions, the results, and the prices paid.

(c) "Transmission in interstate commerce" means transmission directly or indirectly from any place in any State, territory, or possession of the United States, or the District of Columbia to any place in any other State, territory, or possession of the United States, or the District of Columbia.

(d) "Transmission in foreign commerce" means transmission directly or indirectly from or to any place in the United States to or from a foreign country or ship at sea or in the air.

SEC. 3. (a) The use of, on the leasing, furnishing, or maintaining of any communication facility which is or will be used for the transmission of gambling

information in interstate or foreign commerce is prohibited. When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce, it shall discontinue within a reasonable time, or refuse, the leasing, furnishing, or maintaining of such facility, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any such notice. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(b) Nothing in this Act shall be construed to prevent the transmission in interstate or foreign commerce of information in connection with the news reporting of sporting events or contests, which might be gambling information as defined in this Act, if such information is intended, transmitted, supplied, delivered, and received only for printed news publication in newspapers, magazines, journals or like periodicals, or for radio and television broadcasting.

(c) No radio or television broadcasting station, for which a license is required by any law of the United States, shall broadcast or permit to be broadcast any gambling information relating to horseracing before the start of any race on the day it is scheduled to be run, or during the one-hour period immediately following the finish of such race or before the start of the next race at that track whichever period is longer. This section shall not preclude the broadcasting of the progress of, or information concerning, a horserace where such broadcast is carried as a special event: *Provided*, That no more than two horseraces shall be broadcast by any station or chain of stations per day.

SEC. 4. (a) Any person or persons who shall lease or otherwise obtain from a common carrier or other supplier a private line communication facility to be operated in interstate or foreign commerce for or in connection with the transmission of news or other information pertaining to sporting events or contests shall file with the Federal Communications Commission through its agent an affidavit that the communication facility so obtained is to be used for such purposes. For the purpose of receiving the affidavits required by this section the carrier or other supplier from whom the communication facility is obtained is designated the agent of the Federal Communications Commission. The affidavits on file with the Federal Communications Commission, through its agents, the carriers or other suppliers, shall be open to inspection by appropriate State and Federal law enforcement agencies.

SEC. 5. (a) The interstate or foreign character of any transmission of gambling information in, or intended for transmission in, interstate or foreign commerce shall not create an immunity in respect of any criminal prosecution under the laws of any State, territory, possession, or the District of Columbia pertaining to gambling, bookmaking, and like offenses.

(b) Any remedies afforded by this Act are in addition to remedies now existing under State or Federal law, including law applicable within the territories and possessions of the United States and the District of Columbia.

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[From the Congressional Record, House, May 9, 1961]

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ANTIRACKETEERING ACT OF 1961—THE NEED TO FIGHT ORGANIZED OR SYNDICATED CRIME AND TO PREVENT COMMISSION OF TERRORISTIC OFFENSES PERPETRATED BY SUCH ORGANIZED ACTIVITIES

(Mr. Cramer (at the request of Mr. Wallhauser) was given permission to extend his remarks at this point in the Record, and to revise and extend his remarks.)

MR. CRAMER. Mr. Speaker, during the past three Congresses I have introduced a number of bills which I think will go a long way in rooting out the \$20 billion take of organized crime, together with the criminal activities involved in protecting that illicit gold mine, such as extortion, bribery, blackmail, racketeering, narcotics, liquor, prostitution, or gambling, or the commission of murder or other acts of violence in the perpetration thereof, together with other gangster-type criminal activities.

I continue to believe this is one of the major challenges facing Congress, and apparently my position is substantiated by the recent recommendations forwarded to Congress by former Attorney General William Rogers, and his successor, Attorney General Robert Kennedy, both of whom have recommended specific legislation to strengthen the hands of the Department of Justice in fighting national gangsterism.

I am highly gratified that many of the anticrime bills, which I have been introducing ever since I came to Congress—because of my realization of the serious impact, not only economically but morally, on the people of this country, caused by organized racketeering—have been accepted in principle by the previous Attorney General and, to a greater extent, by the new Attorney General.

A number of new proposals are included in the omnibus bill I introduced today which I think are deserving of the full consideration by Congress and the committees thereof.

Ever since the special antiracketeering team, under Milton Wessel, made its report to the former Attorney General, I have been giving special consideration to the form of other legislation needed to strengthen the hand of our law enforcement agencies through the Attorney General's office in combating syndicated crime by establishing an elite specialist group for the purpose of ferreting out the gangsters and criminals operating undercover, often on a nationwide organized basis, and for strengthening the State authorities' fight in this area as well.

The Wessel group recommended the establishment of some type of weapon to fight such organized crime, and, I have today introduced the Antiracketeering Act of 1961, which includes under title I an Office of Syndicated Crime, under the control and jurisdiction of the Attorney General, for this specific purpose.

I have previously discussed the Wessel report in the House of Representatives, and my previous remarks will be found in the Congressional Record of March 3, 1959 starting on page A-1841.

The Antiracketeering Act of 1961 includes the following 11 titles, with appropriate subsections:

"Title I—Office of Syndicated Crime," "Title II—Terroristic Crimes," "Title III—Criminal Expenditures," "Title IV—Transmission of Gambling Information," "Title V—Gambling Devices," "Title VI—Wagering Paraphernalia," "Title VII—Immunity of Witnesses," "Title VIII—Extension of the Fugitive Felon Act," "Title IX—Wiretapping," "Title X—Obstruction of Investigations," and "Title XI—Interstate Travel in Aid of Syndicated Criminal Activities."

A brief explanation follows:

#### TITLE I—OFFICE ON SYNDICATED CRIME

This title would establish within the Department of Justice an Office on Syndicated Crime, whose duty it would be to combat the increasing menace of organized and syndicated crime to our free institutions and to our citizenry.

The need for an agency providing centralization of information concerning known racketeers is best evidenced by the multifarious setup existing in the Federal Government and the lack of coordination between them. Examples of such disjunctive investigative and enforcement agencies are:

Secretary of the Treasury: Coast Guard (14 U.S.C. 89); Bureau of Customs (19 U.S.C. 1581, 1587, 1701-1705); Bureau of Narcotics (26 U.S.C. 7607); Internal Revenue Service (26 U.S.C. 7601-7606); and Secret Service (18 U.S.C. 3056).

Department of the Army: Corps of Engineers (33 U.S.C. 436, 446, 451, 471).

Department of Justice: Federal Bureau of Investigation (18 U.S.C. 3052, 3107); and Immigration and Naturalization Service (8 U.S.C. 1357).

Post Office Department: Post Office Inspection Service (39 U.S.C. 700).

Department of the Interior: Fish and Wildlife Service (16 U.S.C. 631j, 706); National Park Service (16 U.S.C. 10, 10a); and Bureau of Mines (30 U.S.C. 451-473).

Department of Agriculture: Agriculture Marketing Service (7 U.S.C. 1592-1603); Agricultural Research Service (7 U.S.C. 151-164a); Commodity Exchange Authority (7 U.S.C. 1-16); and Forest Service (16 U.S.C. 559).

Department of Commerce: Federal Maritime Board (46 U.S.C. 813-830).

Department of Labor: Wage and Hour and Public Contracts Division (29 U.S.C. 201-219).

Department of Health, Education, and Welfare: Food and Drug Administration (21 U.S.C. 371-374); and Public Health Service (42 U.S.C. 264-272).

Civil Aeronautics Board: Federal Aviation Agency (49 U.S.C. 1482-1489).

Federal Communications Commission (47 U.S.C. 401-416).

Federal Power Commission (16 U.S.C. 825f-825n; 15 U.S.C. 717M-717u).

Federal Trade Commission: Division of Wool, Fur, and Flammable Fabrics (15 U.S.C. 68d, 68e, 69f).

Interstate Commerce Commission: Bureau of Inquiry and Compliance (49 U.S.C. 12-16); Director of Locomotive Inspection (45 U.S.C. 22-34); and Bureau of Safety and Service (41 U.S.C. 15, 19).

Securities and Exchange Commission (15 U.S.C. 77s, 80a-41).

National Labor Relations Board (29 U.S.C. 160-162).

General Services Administration (40 U.S.C. 318-318b).

Atomic Energy Commission (p. 7171) (42 U.S.C. 2201, 2231-2239).

Headed by a Director appointed by the President, the Office on Syndicated Crime would have the duty, under section 102(a), of assembling, correlating, and evaluating intelligence relating to organized and syndicated crime. It would also undertake studies of the organizations, operations, and individuals connected with such activities.

Operating as a clearinghouse for such information, the Office, under section 102(b), would be directed to make available intelligence relating to syndicated crime to all Federal agencies and to non-Federal agencies at the discretion of the Director.

The Office, under section 102(c), would be charged with the development of specialized techniques which would aid in the prosecution of syndicated crime and would be authorized, under section 102(d), to "advise and assist" in prosecutions of persons for syndicated criminal offenses, both in the State and Federal courts.

A key feature of title I is the definition therein contained of syndicated crime. It is defined to include "substantial concerted activities in, or affecting, interstate or foreign commerce, where any part of such activities involve violations of law, Federal or non-Federal."

Enactment of section 102(e) will, for the first time, confer statutory authority upon a Federal intelligence agency to look into the penetration of organized crime, financed by massive illicit profits from purely criminal activities, into the legitimate business sphere. This Nation cannot sit idly by while syndicated crime becomes a partner in our economy.

Another feature of title I is the requirement of section 103 that "routine procedures" be established within the Federal Government to channel all information relating to the operations of syndicated crime to the Office on Syndicated Crime. Coupled with the further provision that the Director may request other agencies to conduct studies of the operations of organized crime, the Office is armed with the necessary intelligence tools to discover how far the insidious activities of syndicated criminal elements have penetrated into the fabric of America, and, under careful supervision, is authorized to assist State law enforcement authorities as partners in the fight against it.

#### TITLE II—TERRORISTIC CRIMES

Title II of my bill would outlaw national conspiracies perpetrated by gangsters and hoodlums who use interstate commerce or interstate communications in furtherance of terroristic activities, crimes and rackets.

My bill would create a new crime known as a "terroristic offense" which is intended to be a catchall for all types of conspiracies of a violent nature which presently, because of their interstate character, have been largely beyond the effective reach of local law enforcement.

The definition of a terroristic offense is "any offense proscribed by the laws of, or the common law as recognized in, any State relating to extortion, blackmail, murder, racketeering, narcotics, maiming or assault with intent to inflict great bodily harm, and punishable by imprisonment in a penitentiary or by death." The penalties range from fines for lesser offenses to death for terroristic offenses involving murder.

I have been deeply disturbed for a number of years upon reading about gangland-style killings in my own district, 21 of which remain unsolved. The nature of these killings and the fact that the perpetrators remain unpunished lend credence to the presumption that they are a part of an interstate conspiracy where the killer is shipped in for the job, or, in the alternative, the code of the mafia seals the lips of all parties involved. Some of these killings are identified with the multimillion-dollar bolita racket in Florida.

When I requested the FBI to investigate one killing and consider supplementing the efforts of the local law enforcement officials, I was advised that

even though the killing was of a gangland nature, there was no Federal crime involved and that, therefore, the Federal law enforcement authority had no jurisdiction in the matter. The services of the FBI were even requested by the local law enforcement officials, but, again, the answer was that no Federal crime was involved. With the enactment of my proposal, the FBI would no longer be shackled and a nationwide dragnet could be put into operation. This is the only method by which this national and international kill-for-money syndicate can be stamped out.

Generally, murder is not a Federal offense. While it is a State crime, local authorities may be incapable, because of the lack of personnel, scientific crime detecting equipment, and so forth, to properly investigate the crime and bring the perpetrators to justice. Since these perpetrators often cross State lines and use interstate communications to carry out their nefarious deeds, their actions are, in truth and fact, interstate in nature and therefore should properly come within the jurisdiction of the Federal Government.

In addition, there are many State crimes either recognized by State statute or State common law, in which interstate instrumentalities are used, and because of this latter circumstance, local authorities not having extraterritorial powers cannot adequately go out to look for and ferret out evidences of the crime. The Federal Government could, however, and should be empowered to do this.

It is the intent of my bill to bring the crime detection and prevention powers of the Federal Government into play principally by making available to the States the services of the FBI, the Federal Narcotics Bureau, the Secret Service, and Federal scientific laboratories for the detection of the activities of secret criminal organizations, such as the mafia and Murder, Inc., and for the apprehension of its offending members.

I trust that my fellow Members of Congress on both sides of the aisle will take the same deep interest in this horrible situation as I do. I have stated how it operates in my own congressional district, and you will find that its network extends into all of your districts.

#### TITLE III—CRIMINAL EXPENDITURES

During the 86th Congress I introduced H.R. 7394, for the purpose of disallowing tax deductions for racketeering business expenses. I have again introduced the bill during this session of Congress, and have incorporated it into my omnibus bill as title III.

This title would deny persons engaged in illegal activities, such as gambling and racketeering, certain tax deductions which are allowed to legitimate businesses. These deductions were given some semblance of legality in the decision of *Commissioner v. Sullivan* (356 U.S. 27), in which the Supreme Court refused to disallow such deductions on the part of gamblers and criminals in the absence of express declaration by Congress. This title is broadened and made more comprehensive by the Attorney General's recommendations, and it would deny tax deductions to persons engaged in illegal activities such as gambling, and clearly shows the congressional intent that such business expenses cannot be deductible for tax purposes. This is one of the recommendations made by Attorney General Rogers in submitting his proposals to Congress. Concerning the elimination of such tax deductions the Attorney General had the following to say:

"Organized crime has derived huge profits from certain businesses carried on illegally. It is obvious that a business conducted furtively and unlawfully will yield larger profits than one transacted openly by law-abiding citizens. It is equally clear that the furtive character of such a business increases the expense and difficulty of tax collection. The Government is entitled to be reimbursed for this drain of its resources, and to secure its full share of taxes from these illegal ventures.

"One example of this type of business is organized crime's illegal gambling enterprises—perhaps its principal source of ill-gotten funds. Almost all of the States have laws prohibiting bookmaking, slot machines, and related activities of the organized gambling fraternity. Policing illegal gamblers is primarily a State and local responsibility.

"There are, however, areas where the Federal Government can properly assist local authorities in the enforcement of their antiracketeering and gambling laws. This bill is designed to deny persons engaged in illegal activity, such as gambling, certain tax deductions allowed to legitimate businesses. This

would deal a severe blow to the organized racketeer by hitting him where it hurts most—in his pocketbook." (See *Commissioner v. Sullivan* (356 U.S. 27).)

#### TITLE IV—TRANSMISSION OF GAMBLING INFORMATION

This title of my bill is designed to aid in the prevention of interstate transmission of gambling information by requiring persons who pay the gambling tax to state, under the penalty of perjury whether they have or will engage in the interstate transmission of gambling information. It is assumed that the information derived will assist Federal, State, and local law enforcement officials.

The first section of title IV defines the terms "gambling information" and "wager." It should be noticed that "wager" is defined here in the same (p. 7172) terms as it is defined in the Internal Revenue Code. The definition, basically, defines wagering as betting on a sporting event or playing the numbers game, policy, or similar types of wagering.

The second section would require each person who is required to pay the wagering tax to file an affidavit stating whether he has or has not, during the last year, sent or received gambling information in interstate commerce, and whether or not he intends to do so while his registration is in effect. A provision is included to permit revised affidavits where a change occurs in the intention expressed. The penalty provided for filing a false affidavit is a fine of up to \$5,000 or imprisonment for up to 1 year, or both. For failure to file, the maximum fine is \$10,000, and the maximum imprisonment is for 2 years.

This section of my bill also makes it a crime for a telephone or telegraph company, and certain of its employees, to provide services to a person they have reason to believe should be registered under the gambling tax provisions of the Internal Revenue Code, unless the Department of Justice has been informed of the circumstances giving rise to the belief.

#### TITLE V—GAMBLING DEVICES

The Attorney General has further recommended that the 1950 law forbidding the "interstate transportation of any gambling device," which now applies to slot machines, should be broadened to include any other device manufactured specifically for gambling purposes, and also to prohibit the shipment of such gambling devices out of the country. In submitting that proposal the Attorney General had the following to say:

"In 1951 Congress passed the Johnson Act (64 Stat. 1134; 15 U.S.C., secs. 1171-1177), which in general forbids the interstate transportation of any gambling device and requires manufacturers of and dealers in gambling devices to register annually with the Attorney General.

"Experience with the enforcement of this act has demonstrated a need for its amendment in several respects. It is proposed to broaden the definition of gambling devices so that not only the slot machines would be covered, but also additional types of machines and mechanical devices designed and manufactured primarily for use in connection with gambling.

"The proposal would also enlarge and more clearly define the categories of persons to whom the registration and filing provisions apply. It would require the maintenance of detailed records with respect to the acquisition and disposition of gambling devices, with provision for inspection and copying of such records by the Federal Bureau of Investigation.

"Provision is made in the bill for the granting of immunity to persons who assert their constitutional privilege against self-incrimination with regard to the maintenance of the required records or testifying before a grand jury or court of the United States. Thus, our enforcement authorities would be able to compel the disclosure by underlings of information necessary for reaching the upper echelons of the crime syndicates.

"Finally, the bill would extend the scope of the act to apply to the transportation of gambling devices in foreign commerce; at present it applies only to the interstate transportation of such devices. This extension would not only eliminate a possible area of gambling device activity, but would further strengthen enforcement of the act with respect to interstate violations, since it is difficult to segregate from an investigative standpoint interstate and foreign shipments."

I introduced H.R. 3024 earlier this session, the same as the bill I introduced last session, to implement that recommendation, with certain modifications, which I believe to be sound. Those provisions which I have incorporated as title V of this omnibus bill are:

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property, provided that the provisions of this subsection shall not apply to parimutuel betting equipment or materials used or designed for use at racetracks where betting is legal under applicable State laws; or".

Sec. 2. Section 1 of such Act is further amended by adding thereto the following subsections:

"(d) The term 'interstate commerce' includes commerce between one State, possession, or the District of Columbia and another State, possession, or the District of Columbia.

"(e) The term 'foreign commerce' includes commerce with foreign country.

"(f) The term 'intrastate commerce' includes commerce wholly within one State, the District of Columbia, or possession of the United States."

Sec. 3. The first paragraph of section 2 of such Act is amended to read as follows:

"It shall be unlawful knowingly to transport any gambling device in interstate or foreign commerce: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section."

Sec. 4. Section 3 of such Act is amended to read as follows:

"Sec. 3. (a) It shall be unlawful for any person during any calendar year to engage in the business of manufacturing, repairing, reconditioning, dealing in, or operating any gambling device if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce, or sells, ships, or delivers such device in interstate or foreign commerce, or sells, ships, or delivers such device knowing that it will be introduced into interstate or foreign commerce, unless such person shall, during the month prior to engaging in such business in that year, register with the Attorney General of the United States his name and trade name and the address of each of his places of business, designating his principal place of business within the United States.

"(b) Every person required to register under the provisions of this Act shall maintain an inventory record of all gambling devices owned, possessed, or in his custody as of the close of each calendar month. The record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, together with the location of each item listed thereon.

"(c) Every person required to register under the provisions of this Act shall maintain for each place of business a record for each calendar month of all gambling devices sold, delivered, or shipped in intrastate, interstate, or foreign commerce. The record of sales, deliveries, and shipments for each place of business shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part sold, delivered, or shipped together with the name and address of the buyer and consignee thereof and the name and address of the carrier.

"(d) Every person required to register under the provisions of this Act shall maintain for each place of business a record for each calendar month of all gambling devices manufactured, purchased, or otherwise acquired. This record shall show the individual identifying mark and serial number of each assembled gambling device and the quantity, catalog listing, and description of each separate subassembly or essential part, manufactured, purchased, or otherwise acquired together with the name and address of the person from whom the device was purchased or acquired and the name and address of the carrier.

"(e) Every manufacturer required to register shall number serially each assembled or partially assembled gambling device which is to be sold, shipped or delivered, and shall stamp on the outside front of each such assembled or partially assembled gambling device so as to be clearly visible the number of

the device, the name of the manufacturer, and the date of manufacture. And every person required to register under the provisions of this Act shall record the data herein designated in the records required to be kept.

"(f) Each record required to be maintained under the provisions of this Act shall be kept for a period of five years.

"(g) (1) It shall be unlawful for any person required to register under the provisions of this Act to sell, deliver, ship, or possess any gambling device which is not marked and numbered as required by this Act or for any person to remove, obliterate, or alter the manufacturer's name, the date of manufacture, or the serial number on any gambling device;

"(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section; and

"(3) It shall be unlawful for any person who has failed to register as required by this Act or who has failed to maintain the records required by this Act to manufacture, recondition, repair, sell, deliver, ship, or possess any gambling device.

"(h) Agents of the Federal Bureau of Investigation shall, at the principal place of business within the United States of any person required to register by this Act, at all reasonable times have access to and the right to copy any of the records required to be kept by this Act, and in case of refusal by any person registered under this Act to allow inspection and copying of the records required to be kept, the United States district court where the principal place of business is located shall have jurisdiction to issue an appropriate order compelling production.

"(i) No person shall be excused from maintaining the records designated herein, producing the same or testifying before any grand jury or court of the United States with respect thereto for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a criminal penalty or forfeiture. But upon asserting the privilege against self-incrimination any (p. 7173) natural person may be required to open the records designated herein to inspection or to testify before any grand jury or court of the United States with respect thereto: *Provided*, That no such person shall be criminally prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing disclosed as a result of the inspection of such records or testimony with respect thereto. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this Act.

"(j) The Attorney General is authorized and directed to make and enforce such regulations as may in his judgment be necessary to carry out the purposes of this Act and the breach of any of such regulations shall be punishable as provided in section 6 of this Act."

SEC. 5. This Act shall take effect on the sixtieth day after the date of its amendment.

This is a continuation of my efforts to get strong antigambling legislation written into law in areas where it has been proven to be needed by recommendations of the Attorney General and reports from the Director of the Federal Bureau of Investigation, together with other reports made available to the Congress. These proposals are directed primarily at syndicated gambling and criminal activities largely nationwide in scope, which is an element that is readily admitted to be in existence and has to date proven itself beyond the grasp of criminal legal processes under existing law. My previous bill, H.R. 7393 of the 86th Congress, received no objection from the Post Office Department, the Secretary of Commerce—although the Department did indicate it was in sympathy with the objective of the proposed legislation. It received favorable recommendations of the Attorney General and there was no objection received from the Interstate Commerce Commission.

#### TITLE VI—WAGERING PARAPHERNALIA

This title of my bill would make it a felony to send or carry knowingly in interstate or foreign commerce any wagering paraphernalia or device used, adapted, or designed for use in bookmaking, wagering pools with respect to a sporting event, or numbers, policy, bolita, or similar illegal games. The enactment of this section of my bill would be of material assistance in bringing about a curtailment of such interstate wagering by vesting jurisdiction in the Federal Government to investigate and prosecute when such criminal activity is disclosed.

Bookmakers and lottery and policy operators presently thrive on widescale interstate operations. State law enforcement agencies have been handicapped by jurisdictional limitations to deal with such operations, and the Federal Government is handicapped by lack of statutory authority to assert its full power.

Attorney General Robert Kennedy stated on April 6 of this year:

"Our revisions are more specific about the material involved and would ban the interstate transportation of sports betting forms, certificates or devices used in bookmaking, numbers games, or other gambling."

I strongly urge the enactment of this proposal which will provide the Federal Government with another tool to combat the forces of organized crime.

#### TITLE VII—IMMUNITY OF WITNESSES

Both the present and the past Attorney General have proposed legislation for granting immunity to persons who claim the fifth amendment in Federal gambling cases, and thus law-enforcement officers could compel underlings to give them information needed to reach the upper echelons of crime syndicates. This legislation would also apply to labor racketeering cases granting immunity to needed witnesses who now claim self-incrimination.

I have already introduced H.R. 3021 this session to amend chapter 95 of title 18, United States Code, to permit the compelling of testimony under certain conditions and the granting of immunity from prosecution in connection therewith. My previous bill, H.R. 7392 of the 86th Congress, received a favorable report from the Department of Justice, and I include herewith a letter from the Deputy Attorney General to the chairman of the House Committee on the Judiciary, dated June 17, 1960:

DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., June 17, 1960.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 7392) to amend chapter 95 of title 18, United States Code, to permit the compelling of testimony under certain conditions and the granting of immunity from prosecution in connection therewith. The measure was introduced at the request of the Attorney General as one part of a three-point Department of Justice legislative program designed to supplement the efforts of the States to eradicate from the American scene the so-called organized criminal.

In labor racketeering cases the experience of the Department of Justice demonstrates an urgent need for legislation to permit the compelling of testimony before grand juries and courts in Hobbs Act and certain Taft-Hartley Act cases. The Hobbs Act (18 U.S.C. 1951) makes it unlawful to interfere with commerce by robbery or extortion, as defined in the act. Section 302 of the Taft-Hartley Act (29 U.S.C. 186) makes it unlawful for an employer in an industry affecting commerce to pay money or make gifts to representatives of any of his employees under circumstances that would constitute such action a bribe. The close connection between the offenses proscribed in these two acts often inhibits cooperation with law enforcement officers. For example, an employer who is a victim of labor extortion may be reluctant to testify in a Hobbs Act case for fear that he may be incriminating himself under section 302 of the Taft-Hartley Act.

H.R. 7392 will add a new section to the "Racketeering" chapter of our criminal code, in which the Hobbs Act is contained. As amended, the chapter will provide that whenever in the opinion of the U.S. attorney it is necessary to the public interest that a witness testify or produce evidence before a grand jury or court of the United States, in a matter involving a violation of the Hobbs Act or section 302 of the Taft-Hartley Act, he may, with the approval of the Attorney General, seek an order of the court instructing the witness to do so. The witness may not then be excused from testifying or producing the evidence on the ground that the act required of him may be self-incriminating, or the measure accords him immunity from prosecution (except for perjury or contempt) with respect to transactions concerning which he is compelled to testify or produce evidence after claiming his privilege against self-incrimination.

Legislation such as this is not uncommon; there are many such immunity statutes and they have been of considerable assistance in accomplishing the more effective administration of justice.

The Department of Justice urges early enactment of this important legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LAWRENCE E. WALSH,  
*Deputy Attorney General.*

I would also like to insert at this point a letter from the present Attorney General, Robert Kennedy, to the chairman of the House Judiciary Committee, under date of April 6, 1961:

OFFICE OF THE ATTORNEY GENERAL,  
*Washington, D.C., April 6, 1961.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: There is now pending in your committee the bill (H.R. 3021) "to amend chapter 95 of title 18, United States Code, to permit the compelling of testimony under certain conditions and the granting of immunity from prosecution in connection therewith." The measure was introduced at the request of the Department of Justice on January 18, 1961.

I affirm and endorse this proposal for the experience of the Department of Justice demonstrates an urgent need for legislation to permit the compelling of testimony before grand juries and courts in Hobbs Act and certain Taft-Hartley Act cases. The Hobbs Act (18 U.S.C. 1951) makes it unlawful for an employer in an industry affecting commerce to pay money or make gifts to representatives of any of his employees under circumstances that would constitute such action a bribe. The close connection between the offenses proscribed in these two acts often inhibits cooperation with law enforcement officers. For example, an employer who is a victim of labor extortion may be reluctant to testify in a Hobbs Act case for fear that he may be incriminating himself under section 302 of the Taft-Hartley Act.

H.R. 3021, in substance, provides that whenever in the opinion of a U.S. attorney it is necessary to the public interest that a witness testify or produce evidence before a grand jury or court of the United States, in a matter involving a violation of the Hobbs Act or section 302 of the Taft-Hartley Act, he may, with the approval of the Attorney General, seek an order of the court instructing the witness to do so. The witness may not then be excused from testifying or producing the evidence on the ground that the act required of him may be self-incriminating, for the measure accords him immunity from prosecution (except for perjury or contempt) with respect to transactions concerning which he is compelled to testify or produce evidence after claiming his privilege against self-incrimination.

This bill effectively supplements the current Department of Justice legislative program aimed at organized crime. I recommend its early enactment.

However, one amendment is suggested for committee consideration. To provide for greater flexibility of administration, it may be desirable to insert the words "or an Assistant (p. 7174) Attorney General designated by him," after the words "Attorney General" on line 6 of page 2 of the bill. This would permit the Attorney General to delegate to the appropriate Assistant Attorney General the responsibility of acting for him in approving applications by U.S. attorneys for orders compelling testimony or the production of evidence.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT KENNEDY, *Attorney General.*

The enactment of H.R. 3021 as title VII of my omnibus bill would effectively supplement the current Department of Justice legislative program aimed at organized crime.

## TITLE VIII—EXTENSION OF THE FUGITIVE FELON ACT

One of the most important titles of my bill would amend section 1073 of title 18, United States Code, the Fugitive Felon Act. The purpose of this section is to amend the act so as to broaden the scope of existing law in order that a number of serious crimes not presently included within the statute will be included in order to assist local law enforcement agencies in the apprehension of fugitives through the services of the Federal Government.

Under existing law it is provided that anyone who moves in interstate or foreign commerce with the intent to avoid prosecution or custody or confinement after conviction, under the laws of the place from which he flees, for certain specified crimes is, upon conviction, subject to a fine of not more than \$5,000 or imprisonment for not more than 5 years or both. The crimes specified are murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, arson punishable as a felony, or extortion accompanied by threats of violence, as well as an attempt to commit any of the enumerated offenses. The section further provides that these offenses shall be considered under the definition of either common law or under the law of the place from which the person fled.

Under title VIII of my bill, the scope of the act is broadened so as to include all felonies or offenses punishable by death or imprisonment for a term exceeding 1 year under the laws of the place where the fugitive flees, or second, to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by imprisonment in a penitentiary is charged. The effect of the proposed amendment will permit local law-enforcement agencies to seek Federal assistance in locating offenders who have fled in interstate or foreign commerce to avoid prosecution, custody, or confinement for a number of serious criminal offenses which are not presently included within the statute. It will supplement the powers of the States in criminal law enforcement through the assistance of the agents of the Federal Government's investigative forces. It will provide either for Federal trials of the persons apprehended or their return to the proper State jurisdiction for prosecution or other appropriate State action. Customarily the State's jurisdiction is honored by the Federal Government.

The Department of Justice has stated that despite the broadening of the jurisdiction under this proposed section, the FBI will not be unduly burdened with unwarranted investigations.

During the 86th Congress, I introduced H.R. 11890 for this purpose, and the provisions of this bill passed the House of Representatives. I have already reintroduced it this session as H.R. 3023, and its provisions are included as title VIII of the Antiracketeering Act.

I would like to insert at this point a copy of a letter from Attorney General Kennedy to the chairman of the House Judiciary Committee, in which he states, "It would serve as another weapon in the attack on the criminal elements in our population. I therefore urge prompt and favorable action on this legislation."

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 468, a bill to amend section 1073 of title 18, United States Code, the Fugitive Felon Act. This bill was introduced at the request of the Department of Justice. An identical bill, H.R. 3023, is also before the committee.

The Fugitive Felon Act now provides that those persons who travel in interstate or foreign commerce to avoid prosecution or custody or confinement after conviction for certain specified crimes such as murder, kidnaping, burglary, etc., shall be fined not more than \$5,000 or imprisoned not more than 5 years or both. These bills would amend the act to include all crimes, or attempts to commit crimes, punishable by death or imprisonment for a term exceeding 1 year.

The proposed amendment will permit Federal law enforcement officers to assist State and local officers in locating persons sought for all serious offenses, that is, offenses which would, under Federal law, constitute felonies, making the interstate flight of such persons punishable as Federal offenses. It would serve as another weapon in the attack on the criminal elements of our population. I therefore urge prompt and favorable action on this legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT F. KENNEDY, *Attorney General.*

#### TITLE IX—WIRETAPPING

By far the most controversial proposal of the Antiracketeering Act of 1961 is title IX, relating to wiretapping. One of the issues over which the Founding Fathers fought the war for independence was the security of the individual from "unreasonable searches and seizures." The fourth amendment was written into the Constitution to protect against such unwarranted intrusions upon a citizen's right of privacy. The fourth amendment provides:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The security granted by the constitutional concept that each man's home is his castle is not absolute, however, as proven by the fact that no "immunization" from searches and seizures was contemplated by the Founding Fathers. What they afforded was a constitutional protection against unreasonable intrusions of privacy only. This concept they also embodied in the Constitution outlining the *sine qua non* procedures for the issuance of search warrants for what might be termed "reasonable searches."

In recent years, the concept against unreasonable searches has run head on into new technology. The advent of telephone and radio, on the one hand, and the development of wiretap and revolutionary eavesdropping techniques, on the other, have created serious new problems. The fearful specter of a 1984-like society intruding upon each citizen's constitutional castle is not one which can be lightly ignored.

But in our zeal to avoid abuses of new techniques, we must not go overboard. The Founding Fathers had experienced unreasonable searches and they guarded against them in a most reasonable manner. They could have provided for constitutional bans against all searches, but they were far too wise to follow that extreme course. Rather, they tempered their approach to suit the legitimate needs of a free society.

It is my conviction that we cannot be less realistic than they were. Following the standard they set for us, we must protect against unreasonable intrusions occasioned by irresponsible use of these new techniques, while, at the same time, insuring the Government reasonable means to protect our citizenry. As Alan F. Westin said in a recent article in *Commentary*:

"To accept the argument that conversations of innocent persons might be overheard as reason for immunizing all telephone or room conversations from authorized search is to create an island of absolute privacy which is at variance with the American tradition, not in keeping with it."

Mindful, as I am, of the serious threat of organized and syndicated crime to our institutions and conscious, as I am, that the threat must be effectively combated if we are to survive as a free society, I have incorporated title IX into the Antiracketeering Act of 1961. A new chapter, chapter 119, dealing with the subject of wiretapping, would be added to title 18 of the United States Code.

Wiretapping, without proper authorization, and unauthorized disclosures secured therefrom are specifically prohibited in sections 2502 and 2503, respectively. Penalties are provided for violation of either section. Section 2504 additionally outlaws the illegal possession of wiretap equipment.

The Attorney General, under section 2505, is, however, authorized to intercept telephone communications to obtain evidence of syndicated crime. A (p. 7175) statutory procedure is established which the Attorney General would be required to follow in order to secure court approval for wiretaps. The application, to be made to a district court or court of appeals, would have to satisfy the hearing judge of the existence of reasonable grounds to warrant the tele-

phone interception. Protections are built into the proposal to guard against abuse. Wiretap evidence not secured in compliance with title IX would be specifically barred from receipt into evidence in any case.

Section 2507 fills the law enforcement gap created by the confusion of decisions as to the effect of interceptions by State officers. Such wiretaps, if made pursuant to a court determination of reasonableness, are specifically held not in violation of Federal law.

To my mind, title IX is a necessary and reasonable approach to a most serious problem. It is one that is certainly consistent with the approach of the Founding Fathers, embodied in the fourth amendment. As with that amendment, the constitutional castle concept is preserved from intrusions which are unreasonable.

#### TITLE X—OBSTRUCTION OF INVESTIGATION

No crackdown on organized crime can succeed without the cooperation of a citizenry freed from fear of reprisal from gangland elements. As the Attorney General stated: "Experience has shown that potential witnesses are often intimidated, threatened, or coerced when a matter is in its investigative stage, prior to the initiation of a proceeding."

As the law now stands, the obstruction of justice statutes (18 U.S.C. 1503, 1505) prohibit the intimidation of witnesses after formal proceedings have begun. But during the investigative stage, the potential witness is not so protected. Thus, by intimidating witnesses during an inquiry, the subsequent initiation of formal proceedings may be effectively thwarted, without violating the obstruction prohibition. In effect, because the gap exists, the Federal Government is put into the position of sanctioning what might be called back-door obstructionism.

The Attorney General has advocated that the situation be remedied and I support him in his effort. I fear, however, his proposal may be too broad for comfort, for it would not only prohibit intimidation, threats, and coercion to obstruct justice, but would also carry severe penalties for the furnishing of false or misleading information to any Government department or agency engaged in a lawful inquiry. While I am in sympathy with the end the Attorney General seeks to achieve with this latter provision, I am fearful that his approach is too dangerous for this body to sanction. The grant of such authority, unless zealously restricted, might well constitute a long, long step toward a gestapolike Government control over the people.

In my opinion, to hold a citizen criminally liable for giving false information during an investigation when that information was given under oath could result in deterring witnesses from volunteering much needed information. In cases of statements under oath, present laws adequately deal with the problem.

Title X, therefore, deletes that portion of the Attorney General's proposal. It is restricted to prohibiting obstruction of inquiries or investigations by intimidation or injury of any person and is further restricted to cases involving syndicated criminal activities.

I believe that such a proposal would give the Government an effective investigative tool against organized criminal elements, while, at the same time, protecting our people from unwarranted governmental persecution.

#### TITLE XI—INTERSTATE TRAVEL IN AID OF SYNDICATED CRIMINAL ACTIVITIES

Title XI of the Antiracketeering Act of 1961, deals with unlawful travel in aid of syndicated criminal activities. Adapted from my bill, H.R. 5186 of the 86th Congress and adopted in principle by the Attorney General, involving interstate travel, the proposal is designed, in the words of the Attorney General, "to impede the clandestine flow of profits from criminal ventures and to bring about a serious disruption in the far-flung organization and management of coordinated criminal enterprises."

Title XI makes illegal the crossing of State lines or national boundaries to promote, manage, establish, carry on or distribute the proceeds of syndicated criminal activities. As defined, such activities comprehend "substantial concerted activities in, or affecting, interstate or foreign commerce, where any part of such activities involve violations of law, Federal or non-Federal."

As modified, title XI is broader, while, at the same time, narrower than the approach recommended by the Attorney General, since only organized criminal activities are comprehended by the prohibition on unlawful travel.

Additionally, the provision has been further limited to nonviolent activities since "terroristic" offenses have been adequately dealt with in title II of the Antiracketeering Act of 1961.

Under present law and even with the adoption of title VIII of this act, and without this title and title II, it is essential for there to be a known suspect before the Federal Government can even give limited investigative aid to the States and even on their request. This title will cure this obvious weakness.

#### CONCLUSION

I am delighted to know that the present Attorney General has accepted the basic concepts of practically all the anticrime legislation I have introduced over the last 6 years, and which is, with additional proposals, now embodied in the Antiracketeering Act of 1961.

I trust that serious consideration will be given by the Department of Justice and by the Congress to this omnibus bill. I believe it to contain the basic essential tools as a minimum for starting an organized, effective fight against syndicated crime.

This, by no means, is the ultimate, and I believe that further tools can be molded only after lengthy consideration by the Congress as a result of studies and possibly investigations into the activities of syndicated crime and the need for proper means of further buttressing the local law enforcement activities and strengthening their hand to combat this menace.

I trust that the Congress will take effective and immediate action on this much needed legislation which I have been pressing for ever since I became a Member of Congress.

I am of the opinion that Congress would be derelict in its duties not to go forward with this bill. My bill encompasses many provision that the Attorney General, of either the previous or present administration, has failed to recommend. I think serious consideration should be given to all of these proposals if we are to effectively root out syndicated gangsterism and crime.

It is noteworthy that my bill goes much further than the Attorney General's recommendations, and further than other bills introduced. I think these measures are worthy of serious consideration by the Congress and the additional provisions are included in order to secure proper study of other means of combating crime in addition to those proposed by the Attorney General.

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#### PUBLIC BILLS AND RESOLUTIONS

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By Mr. Cramer: H.R. 6909. A bill to strengthen the criminal laws so as to further protect all persons from the menace of organized and syndicated crime, and for other purposes; to the Committee on the Judiciary.

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DEPARTMENT OF JUSTICE,  
ATTORNEY GENERAL'S SPECIAL GROUP,  
New York, N.Y., February 10, 1959.

HON. WILLIAM P. ROGERS,  
*Attorney General, Department of Justice,*  
*Washington, D.C.*

DEAR MR. ATTORNEY GENERAL: Enclosed for your consideration is the recommendation for improving Federal legal prosecution of syndicated crime, submitted by your Special Group on Organized Crime in the United States.

I believe this report points the way toward a new and important contribution to the administration of criminal justice in this country.

Respectfully yours,

MILTON R. WESSEL,  
*Special Assistant to the Attorney General.*

#### REPORT TO THE ATTORNEY GENERAL OF THE UNITED STATES

The Attorney General's Special Group on Organized Crime in the United States herewith submits its recommendation for improving Federal legal prosecution of syndicated crime:

This report recommends a streamlining of Federal criminal prosecution to equip it to deal effectively with modern syndicated crime.

Syndicated crime today presents a serious threat to our society. The splintered structure of American criminal law enforcement is the primary cause of law enforcement breakdown, not substantive law.

It is a startling fact that nowhere in Government does there exist a permanent force capable of unifying action of the thousands of Federal, State, local and special law enforcement units all over the country. Nowhere is there even a clearinghouse to which police or prosecutors can turn for advice on where criminal intelligence can be found.

The remedy is to create the Attorney General's Office on Syndicated Crime, with the mission of serving as the nerve center maintaining communication between law enforcement units, and as the cohesive force in a truly unified prosecutive effort against syndicated crime.

#### I. A CRIME SYNDICATE IS A FORM OF GOVERNMENT

The work of the special group on organized crime has established the existence of nationwide crime syndicates in the United States beyond any doubt.

While the existence of crime syndicates cannot be controverted, present criminal prosecution has yet to pierce a syndicate heart, although it sometimes convicts a few of the leaders.

##### *A crime syndicate defies prosecution*

The reasons why prosecution of a syndicate is so difficult are—

(1) A crime syndicate is more a form of society or government than a prosecutable organization.

(2) The criminal object of a syndicate is usually general and not the commission of any presently indictable crime. Syndicated crimes are committed by criminal conspiracies of members in association with outsiders, and are rarely participated in, or even known about, by more than a fraction of total syndicate membership.

##### *Definition of a crime syndicate*

The phrases "crime syndicate" is not susceptible of mathematical or precise definition. Technically, it would apply to any group of two or more persons (p. 4) violating a criminal statute. However, for purposes of discussion in this report, a crime syndicate is defined as a group having most of the following characteristics, although not necessarily all of them:

(1) A substantial number of members.

(2) A large gross volume of operations.

(3) Interstate operations involving at least a substantial geographical part of the Nation.

(4) Operations on several vertical levels, such as supplier, manufacturer, wholesaler and retailer; members separated by two or more levels of operation frequently not knowing the identity of each other.

(5) Major beneficial interest and management divorced from operation, with top leadership engaging primarily in crimes of conspiracy or of aiding and abetting.

(6) Membership usually engaging in more than one kind of criminal activity.

(7) Membership habitually engaging in similar criminal conduct, and relying on it as a primary source of income.

A crime syndicate can be superficially analogized to an extremely close family (or fraternal organization) which considers family honor above legal obligation. Like the members of such a family, syndicate members will not inform on each other or turn to the law for assistance. Troubles within the group are settled as (p. 5) by a father, a respected uncle, or older brother. A member who violates the syndicate code will be punished by the group. When one member gets into trouble, the others come to his assistance without consideration of legal obligation.

The analogy ends with these superficial similarities. For the crime syndicate is composed of persons having little respect for public law generally. They habitually engage in criminal conduct, including even murder when necessary.

##### *Syndicate objective is obstructing justice*

A syndicate itself does not ordinarily act as a cohesive unit in committing crime for profit. It merely supplies a code of conduct protecting its members

from detection when they engage in crime, and acts as a government to insure strict adherence to that code.

The crime of a syndicate is obstruction of justice. But it is obstruction of justice in general, prosecutable normally only when its actions interfere with some specific legal proceeding.

The existence of a syndicate as a government is best seen when some of its members carry out the ultimate punishment for violating the code of secrecy, the death sentence. While many gang murders are carried out in secret, occasionally one must be public for purposes of deterrence as well as retribution, like any governmental criminal sanction. Such a murder often has several characteristic touches so that it will be recognized and serve as a warning.

#### *Difficulty in proving the syndicate*

The organization of a syndicate as a society or government, with only the general criminal object of obstructing justice, obviously renders prosecution most difficult under existing criminal law. Even were the law otherwise, however, obtaining competent evidence to prove the organization is a formidable task.

First and foremost, the code of secrecy makes it almost impossible to get a member to give evidence against his brethren, or at least to keep him alive long enough to testify in court. This means that the organization and its membership must be proved entirely by circumstantial evidence.

Second, the code or standard of conduct which is the organization's crime is not something reduced to writing, and is rarely even spoken about—it is second nature. Members are only taken into the organization after they have proved their right to membership in some positive fashion, such as by adherence to the code in the face of extreme danger. Rarely, if ever (p. 8), do all get together; the limited evidence there indicates that larger meetings are held only for limited purposes at limited times to consider specific problems.

Such an unwritten agreement is obviously most difficult to prove; it requires the painstaking collection and piecing together of items of similar conduct, each on the surface apparently innocent, but which in sum evidence conspiracy, similar to the technique of the long and complicated antitrust case based upon evidence of conscious parallelism.

Third, the kinds of evidence which must be collected to prove the syndicate, the membership of which is frequently composed largely of persons of common national origin, makes ever present the danger of guilt by association. This requires that all possible precautions be taken to insure that innocent persons not be treated unfairly. It is one of the reasons why any attempt to investigate or collect or disseminate intelligence about syndicated crime must be tied inextricably to the duty to prosecute. Only in this way can the public be assured that accusations will not be made without (p. 9) the protection to the accused of grand jury indictment and trial in accordance with due process of law.

A crime syndicate's purpose and structure clearly presents a tremendous challenge to law enforcement, which must be met.

Investigation and prosecution must be vigorous, penetrating, and imaginative; at the same time there must always be sufficient probable cause and other safeguards to protect individual rights.

It is a fact, however, that until creation of the temporary special group, there was not a single unit of government having the nationwide geographical jurisdiction and authority under all Federal laws necessary to begin even the task of grand jury investigation.

Success in the struggle against syndicated crime requires that the offensive be constantly maintained through a permanent and effective prosecution unit, capable of striking whenever and wherever syndicated crime moves.

## II. MODERN SYNDICATED CRIME IS LARGELY COMMERCIAL AND APPEARS INNOCENT

Syndicated crime has undergone great change in the last 30 years. Indeed, the most startling developments have come only since World War II, paralleling the tremendous growth in our economy and scientific advances in the fields of communication and transportation. While government has created a new socio-economic structure to deal with the modern economy, it has done little to enable criminal law enforcement to deal with modern syndicated crime.

Not many years ago the most serious social threat was from crimes directed against person and property, such as burglary, kidnaping, or bank robbery. Commercial crimes such as labor, antitrust or securities law violations existed, but were not usually engaged in by syndicate members and were of relatively lesser importance.

Today, members of modern syndicates have moved into the very lucrative economic areas created by our ever-growing national wealth. While doing so, they have developed techniques which tend to render (p. 11) ineffective the ordinary methods of prosecution geared largely to crimes against the individual and property.

The most important methods adopted by syndicate members to avoid prosecution are the following:

1. *Witnesses join the conspiracy and will not testify.*—Syndicated crime has turned largely to the extremely profitable and relatively risk-free crimes in which, for practical purposes, there is no individual victim. Indeed, in many cases the conspiracy actually brings the victim into its fold as a coconspirator.

Examples of this type of crime are antitrust, gambling, and even narcotics violations. In all of these the victim usually becomes a party to the crime. Thus, in the antitrust violation, the businessman joins the combination because he is afraid or considers it profitable to eliminate competition; in the gambling operation, the bettor is a necessary participant without whose willing cooperation there could be no crime; in the narcotics transaction, the user is vitally concerned with the continuance of supply and often engages in other crimes to assure this supply.

Except for narcotics, the public is not much troubled by the operations of syndicates in these commercial areas. Most people seem unable to feel strongly against the local "bookie" even though illegal gambling is by far the largest single source of syndicated crime profit.

Public apathy notwithstanding, it is precisely this kind of superficially innocuous-appearing crime which can lead to corruption in public office and decadence in government.

Seldom does a police or other public official accept a bribe in a murder or rape case; rarely have whole governments been tainted with corruption arising out of crimes of violence. Yet, once corrupted in areas of commercial illegality, the corrupt official must continue his illegal cooperation with the syndicate even when it engages in the most vicious underworld enforcement violence, such as a gang murder or the beating of a defaulting debtor in a loan shark operation.

2. *Violence is avoided to create public apathy.*—Except in underworld criminal enforcement activities, usually directed against members or conspirators, syndicated crime has largely eliminated actual violence as a weapon of crime, although the threat of violence is often implied. This makes syndicated crime appear even more innocuous, lulling the public into an apathy which makes it difficult to find support for vigorous criminal law enforcement.

3. *Existence of the crime is concealed to thwart investigation.*—Without a specific victim or violence, there is no readily apparent crime, or "corpus delicti." Criminal enforcement must, therefore, go a step behind finding the culprit: it must first find the crime. Modern methods of laboratory criminal investigation, such as fingerprint or blood analysis (an area in which law enforcement has kept pace), are useless. In discussing Federal enforcement, it will be shown that this apparent elimination of the "corpus delicti" frequently means that no Federal investigative agency has authority to act. Each such agency investigates only crimes specifically assigned to it—none has general authority to investigate to find out what the crime is.

4. *Traditional Federal violations are avoided to eliminate nationwide Federal jurisdiction.*—Members of modern crime syndicates tend to avoid areas in which there is vigorous and effective Federal law enforcement. There is evidence, for example, that one conspiracy has recently murdered a member who violated an order to the group to cease dealing in narcotics. Syndicated crime today rarely engages in crimes such as counterfeiting.

Much of the credit for this trend toward avoidance of traditional Federal violations in syndicated crime must go to the excellent work of the Federal law enforcement agencies. In part, however, the trend must be considered an attempt to avoid the nationwide jurisdiction of Federal law enforcement. By committing crimes within only local jurisdiction, such as gambling, prosecution can be splintered into a large number of local districts, and the syndicate leaders thereby effectively insulated from enforcement.

Of course, it is impossible for syndicates to avoid all Federal criminal jurisdiction; almost essential is some violation of the Federal revenue laws. In addition, because of the size of syndicated crime, its trend toward commercial violations and the ever-growing Federal controls in the areas of commerce and social welfare, there is real criminal and civil enforcement jurisdiction in some of the Federal economic and social laws. The antitrust and labor laws are good

examples, but there are many others. The agencies charged with enforcing these laws are necessarily primarily concerned with matters of general economic and social significance. They should be assisted by a prosecution unit specializing in syndicate operations which can provide information (p. 14) to help them decide how and where to use their limited staffs to combat syndicated crime.

*5. Syndicate leadership is insulated from prosecution by farflung vertical operations.*—Just as with big business, management of the syndicate acts on a very different level and often miles away from operation.

This separation has two important consequences to law enforcement. First, each level operates as insulation to the higher level, since criminal law enforcement loses effect the further it strays from the specific, physical criminal act. Second, the leaders can remove themselves from the subpoena power of any particular local prosecutor. Even the most vigorous local district attorney finds it virtually impossible to investigate where the real culprits are outside his subpoena jurisdiction.

*6. Specialists are used to provide maximum protection against prosecution.*—Experience has taught syndicate members to acquire the services of highly qualified attorneys and accountants. Penetration of the cloak of legitimacy created by their efforts is sometimes almost impossible, and frequently requires years of painstaking digging into documents and records.

*7. Effective public relations are used to create the atmosphere of legitimacy.*—Along with the graduation of syndicated crime into commercial areas has come an ever-increasing use of the techniques of modern public relations to deceive the public, create the appearance of legitimacy and enable close relationships with important (p. 15) public officials. Substantial charitable and political contributions are the rule; membership in religious, fraternal, and civic organizations a necessary part of life. The profits of criminal operations are being more and more channeled into legitimate investments in business and industry. The result is that some of the most important syndicate leaders are men of outstanding public reputation with no criminal records, or at least none for two or more decades.

Effective prosecution of this kind of syndicated crime requires a redirection of Federal criminal law enforcement effort into commercial areas, assisted by a Federal prosecution staff specializing in syndicated crime and working closely with State and local law enforcement authorities.

### III. SPLINTERED LAW ENFORCEMENT MINIMIZES THE EFFECT OF PROSECUTIVE ACTION

A fundamental characteristic of American criminal law enforcement is that it is broken down into a large number of small and independent units of strictly limited jurisdiction. This traditional "splintered law enforcement," long considered a safeguard to freedom in our society, is at the same time a primary cause of our inability to deal with syndicated crime, which cuts broadly across jurisdictional lines.

#### *Splintered State and local enforcement*

Law enforcement is administered by Federal, State, and local governments. In each, it is divided into two types of activity: investigation (police operation) and prosecution (court action). In the non-Federal area, encompassing perhaps 90 percent or more of all crime, there are 49 States, plus the District of Columbia. Each of these subdivisions is broken down further into numerous smaller political units. Thus, there are thousands of State, city, county, and special police units and State attorneys general, district attorneys, and special prosecutors.

#### *Splintered Federal criminal investigation*

Splintered law enforcement also exists in the Federal Government.

In the area of criminal investigation there are a great number of investigative units, each having very strictly limited authority. The most commonly known are: Alcohol and Tobacco Tax Division, Customs Agency Service, Federal Bureau of Investigation, Immigration and Naturalization Service, Internal Revenue Service, Narcotics Bureau, and Secret Service.

But there are many more, such as investigative, intelligence, or other law enforcement units within the Defense Department, Post Office Department, State Department, Central Intelligence Agency, Civil Service Commission, Coast Guard, and Veterans' Administration.

And as already indicated, such units of the economic and social agencies can and should have an important part to play in syndicated crime enforcement. The

later include units in the Agriculture Department, Commerce Department, Interior Department, Labor Department, Food and Drug Administration, Small Business Administration, Social Security Administration, Federal Communications Commission, Federal Housing Administration, Federal Trade Commission, Interstate Commerce Commission, National Labor Relations Board, and Securities and Exchange Commission.

Each of these investigative units has limited jurisdiction and requires a specific lead to a matter within its assigned powers before it can move. As already indicated, this means that no Federal investigative agency is authorized to act even where the existence of a crime syndicate is clear, unless there is also at least some evidence of the Federal crime involved. On the other hand, it also means that each agency conducts investigations of the same subject where several Federal crimes are suggested.

#### *Federal criminal prosecution also splintered*

Federal criminal prosecution is also splintered, even though all Federal crime is prosecuted by some part of the Department of Justice.

Most actual court prosecution is delegated to the 94 U.S. attorneys, each operating within a geographically limited district.

In practice, U.S. attorneys are limited in legal as well as in geographical jurisdiction. Most important, prosecution of antitrust cases is handled by the Antitrust Division, with headquarters in Washington and field offices throughout the country.

The Department of Justice itself is broken down into legally specialized Divisions. The most important Divisions having jurisdiction over syndicated crime matters are Antitrust, Criminal, and Tax. These Divisions are further broken down into sections, each dealing in even more specialized legal areas.

Nowhere in this mass of prosecutive units is there one having the necessary jurisdiction or staff to deal with syndicated crime. In Washington, each unit operates within limited and highly specialized legal areas; in the field, within limited geographical areas as well. Even the Organized Crime and Racketeering Section in the Criminal Division has no tax, civil, or antitrust authority, limited criminal authority, no permanent field organization, and insufficient budget or staff to adequately deal with the problem.

#### *Advantages of splintered law enforcement*

While presently resulting in ineffective prosecution of syndicated crime, splintered law enforcement itself has many advantages. On the prosecution side, it permits specialization, which is necessary in the complicated fields of modern law. On the investigation side, it serves also as protection against too great concentration of criminal enforcement power.

The advantages of splintered law enforcement can be retained even in a modernized law enforcement structure, through the creation of a permanent unit charged with the mission of unifying Federal, State, and local law enforcement against syndicated crime. The new unit should be a true catalytic agent in this area, acting as a nerve center or clearinghouse permitting communication between existing law enforcement units, but assuming none of their jurisdiction.

The new unit must be a Federal one, even though most crime is State and local. Only the Federal Government has the necessary nationwide jurisdiction for overall catalysis.

#### *Attempts at unified effort*

In the absence of the necessary new unit, Federal, State, and local agencies are doing their best to work out effective unification of effort.

The FBI's fine fingerprint and criminal laboratory assistance to other law enforcement units, for example, is well known. Not so well known is its effort at cooperation through assigned liaison representatives making regular calls on law enforcement agencies.

Other Federal agencies also do their best to assist and cooperate. Similar attempts are being made on the State and local level through regional coordination groups such as the Law Enforcement Intelligence Unit in the West.

Helpful as these attempts are, it is impossible to obtain real communication without a unit having this as a primary mission, and also having nationwide jurisdiction. No matter how great his desire to cooperate, a detective in one city cannot know what an assistant district attorney in a distant city needs to piece together a complex syndicated crime pattern.

*Demand for unified effort*

There clearly exists a real hunger for the unified prosecutive effort against syndicated crime, particularly on the local level where law enforcement units are more isolated from each other.

Evidence of this is not only in the words of law enforcement officials all over the country, but in the tremendous welcome and response given to the initial efforts of the Special Group on Organized Crime in this direction.

Indeed, the only reluctance exhibited has been because the special group is a temporary task force, with neither the facilities nor the anticipated life necessary to produce the truly unified prosecutive effort.

#### IV. RECOMMENDATION FOR THE CREATION OF THE ATTORNEY GENERAL'S OFFICE ON SYNDICATED CRIME

Prosecution of modern syndicated crime can never be really effective until all proper governmental power is focused into a single unified attack. This concentration should be carried out on a cooperative and not compulsory basis in order to retain the advantages of specialization resulting from division of criminal law enforcement into numerous units.

The difficult task of concentration should be the mission of a unit having no other assignment. That unit should have the following functions:

1. *Federal prosecution of the leaders of syndicated crime.*—Actual civil and criminal prosecution of the relatively few persons engaged in the top leadership of crime syndicates should be handled by a single group of prosecutors specializing in syndicated crime.

As already discussed, syndicated crime is a most complicated subject, calling for just as expert legal handling as any tax or antitrust case. Grand jury investigation preliminary to indictment, for example, must be nationwide, and under all Federal laws. The prosecutor must have the background and experience to recognize how an apparently innocent (p. 24) bit of evidence fits into the larger jigsaw puzzle which makes up the syndicate.

The syndicated crime unit itself should only handle prosecution of the leaders of syndicated crime. The great bulk of Federal prosecution of syndicated crime should continue to be handled as it is now. However, as part of its prosecution function, the new unit should assist other Department of Justice prosecutors in syndicated crime matters. Thus, it should advise the Antitrust Division of industries apparently infested with persons engaging in syndicated crime, or advise U.S. attorneys through the Department of local situations requiring action.

2. *Cooperation with State and local authorities.*—A primary function of the new unit should be the creation of truly unified prosecutive efforts against syndicated crime through cooperation between Federal, State, and local enforcement authorities.

As already stated, on the State and local level there is real hunger for cooperation with Federal authorities and with each other. But the cooperation must be on a reciprocal basis. In fact, because the overwhelming proportion of crime is State and local, the result of the new unit's operations should be many more non-Federal than Federal prosecutions.

3. *Easing of access to criminal intelligence.*—Another function of the new unit should be to assist other Federal, State and local law enforcement authorities to obtain criminal intelligence with respect to syndicated crime.

There is an ever-growing demand for the creation of a Federal criminal intelligence unit to which prosecutors and investigators can turn (p. 25) for assistance. The new unit can satisfy this demand by placing agencies seeking information in direct and immediate contact with those best qualified to help.

The new unit itself should only disseminate information where the source of the information has authorized disclosure. In this way current information can be exchanged between law enforcement agencies themselves, directly and quickly, in an atmosphere of true cooperative effort.

4. *Assistance to administrative enforcement.*—As part of its overall mission to concentrate governmental power on the leaders of syndicated crime, the new unit should furnish information to assist Federal, State and local administrative agencies in law enforcement. The agencies themselves, of course, will then take such action within their jurisdictions as they deem appropriate.

Assistance of this kind is essential, because administrative agencies today hold great civil, quasi-criminal, and even criminal law enforcement powers. However, by and large they do not have the staffs and money to handle each complaint filed, license application submitted or request for aid as though syndi-

cated crime were involved. It is essential that the new unit affirmatively undertake to place at their disposal the total of criminal intelligence elsewhere available. Only in this way can there be positive action to intensify administrative law enforcement, and also keep syndicated crime from receiving Government benefits to which it is not entitled.

5. *Coordination of syndicated crime matters within the Justice Department.*—The new unit itself should be within the Justice Department, and should coordinate activity within the Department with respect to syndicated crime and its leadership.

One specific assignment in this connection should be the maintenance of a central file index of criminal data within the Justice Department relating to syndicated crime. Nowhere does such an index exist. Nowhere is there even any overall central index of investigative reports submitted to the Department by the many reporting investigative agencies.

6. *Preparation of legislative and administrative recommendations for combating syndicated crime.*—The conclusion of this report is that the greatest need is for more effective prosecution under existing law through a modern law enforcement structure, not for new laws and regulations. That is not to say, however, that experience and study will not suggest many new areas of required legislation or regulation to keep up with the rapid developments in the field. As syndicated crime, employing the services of its specialized attorneys and accountants, develops new techniques to avoid prosecution, Government must develop counter techniques. The new prosecution unit would be best qualified to initiate legislative or administrative recommendations in this connection.

7. *Initiation of investigations of syndicated crime.*—As earlier stated, there sometimes exists no apparent syndicated crime corpus delicti, with the result that no Federal investigative agency has power to investigate.

To avoid this law enforcement vacuum, the authority of the FBI should be enlarged to enable it to conduct syndicated crime investigations, in cooperation with the new unit. As such investigations proceed, any information or leads which may relate to crimes within the jurisdiction of other agencies can be turned over to them in accordance with existing procedures.

#### *Creation of Attorney General's Office on Syndicated Crime*

The new unit to carry out these syndicated crime functions should be the Attorney General's Office on Syndicated Crime, with jurisdiction nationwide and under all Federal laws.

The structure of an office in the Justice Department, with field offices as required, has been chosen over other possible types of unit for the following reasons:

(1) The new unit must be within the Department of Justice to avoid separation of the criminal intelligence and investigation functions from the obligation to prosecute, avoid duplication of the great effort already being conducted by the Department of Justice and eliminate unnecessary conflict with existing prosecution offices.

(2) The new unit should be a field prosecution office first, operating as close to the cooperating Federal, State, and local agencies as possible. Cooperation can best be worked out on the scene, with a minimum of documentation and delay.

(3) The new unit can have the subpoena power and access to current criminal intelligence needed to supplement the contributions of others in the unified effort.

(4) The new unit should have the guidance of the Divisions and Sections in the Justice Department and access to their specialized legal competence.

(5) The new unit must have the stature to deal with public officials whose cooperation is sought and attract outstanding attorneys for its prosecution staff.

(6) The new unit will fill a well-recognized place within the Justice Department's scheme of organization, thereby reducing possible jurisdictional conflicts to a minimum.

#### *Syndicated Crime Office should be small*

The Attorney General's Office on Syndicated Crime should be of the smallest possible size consistent with carrying out its mission. To remain small, it must adopt a strict policy of avoiding activity in any area covered by others.

## CONCLUSION

Since its creation April 10, 1958, the Attorney General's Special Group on Organized Crime has been carrying out the recommended seven syndicated crime functions as a task force, spearheading the Department of Justice's overall drive against syndicated crime.

The need for a permanent unit to continue and expand this work in the areas of unification of effort and establishment of communication between law enforcement agencies is certain, as attested by the pleas of law enforcement officials all over the country.

Even in the single area of Federal prosecution of the leaders of syndicated crime, the details of which are still secret, there is every reason to believe that important results will be achieved. There can be no excuse for delay in other areas of urgency to await the outcome of criminal investigation, prosecution, and appeal, a process which usually takes many years.

The function of the temporary syndicated crime task force is to point the way. That way is now clear. It is to create a new and permanent force in Government, providing the catalytic action and unification of effort which can bring the leaders of the criminal underworld to the bar of justice.

Respectfully submitted.

MILTON R. WESSEL,

*Special Assistant to the Attorney General, Chief, Attorney General's  
Special Group on Organized Crime in the United States.*

The CHAIRMAN. Do you want your full statement in, too?

Mr. CRAMER. Yes, sir.

The CHAIRMAN. That will be put in the record.

(The complete statement of Mr. Cramer is as follows:)

## STATEMENT BY CONGRESSMAN WILLIAM C. CRAMER

H.R. 6909—ANTIRACKETEERING ACT OF 1961

Mr. Chairman, I am here today to urge your support for legislation which will enable law enforcement authorities to effectively cope with the increasing menace of organized crime.

I am certain that every member of this committee is aware of our Nation's rising crime rate. Your presence here today is a reflection of your concern over this problem. Year by year, lawless elements have defied the best efforts of enforcement authorities. The problem grows worse instead of better.

Concurrent with what might be characterized as the "crime explosion" has been a parallel growth of organized criminal activities in America. As former Attorney General Rogers observed in a speech in 1958:

"\* \* \* one of the most obvious facts about the growth of crime in our country \* \* \* is the growth of organized crime, and the success of its operations. Syndicates made up of criminals have extended and coordinated their operations over many States and, in many cases, across national boundaries. Why is this true? It is true because organized racketeers and hoodlums have learned how to make crime pay."

The top echelon of organized criminals today have been able to remove themselves from exposed positions. Instead of occupying the limelight, they now operate through henchmen many times removed. Their business is still evil and corruption, but they scheme, direct, and control nowadays from afar. Thus, while exercising control over illegal activities yielding vast illicit profits such as gambling, narcotics, and extortion, they do so virtually immune from fear of prosecution and punishment from any quarter. They have learned to subvert and pervert our Federal-State system to their own advantage. By effectively doing so, they manage to avoid the consequences of their illicit activities. With the best will in the world, local and State law enforcement authorities are no match for them.

Because of my long-time concern with the problem, I have, for a number of years, made legislative recommendations to cope with the rising menace of organized crime. Starting in the 85th Congress, I introduced proposals aimed at filling the law enforcement vacuum in which organized crime has learned to live and flourish. My efforts, at first, won little support on either side of the aisle. But as time went on and the problem became more acute, allies began to materialize. Needless to say, I was happy when, last year, the administration, acting through

the then Attorney General William Rogers, joined in support of certain of my measures. Regrettably, despite the crying need for action, the Congress did nothing. Now as the tenacles of organized crime penetrate closer and closer to the vitals of our society, we must act or be destroyed by the malignancy.

The responsibility of Congress is clear; our duty to act, mandatory.

I was, therefore, pleased to learn of the new Attorney General's, Mr. Kennedy's, determination to enter the organized crime fray, and was most happy when informed that he had, with some changes and additions, endorsed the legislative approach adopted last year by Attorney General Rogers and myself. With bipartisan support from both Democrats and Republicans, I am confident we can get the necessary anticrime weapons to do the job through the Congress this session. I applaud the Attorney General for his stand.

On May 9 of this year, I introduced H.R. 6909, an omnibus bill to strengthen the criminal laws so as to further protect all persons from the menace of syndicated and organized crime, and for other purposes. Called the Anti-Racketeering Act of 1961, my bill, composed of 11 titles, is designed to furnish law enforcement authorities with the basic tools to stamp out the cancer of the Mafia. Respecting as it does traditional concepts of local responsibility, H.R. 6909 avoids an unnecessary expansion of Federal prerogatives at the expense of the States.

At the same time, it does confer the tools necessary to cut off the interstate tentacles of organized crime. Because I believe the job needs to be done and because I believe my bill contains the essential tools for doing it, I strongly urge the proposed Anti-Racketeering Act of 1961 for the consideration of this committee.

Title I would create an Office on Syndicated Crime, whose duty it would be to "assemble, correlate, and evaluate intelligence procured by other agencies, both Federal and State, relating to the operations of organized crime."

Mr. Milton R. Wessel, former special assistant to Attorney General Rogers, had this to say in his recommendation for improving Federal prosecutive efforts against syndicated crime:

"It is a startling fact that nowhere in Government does there exist a permanent force capable of unifying action of the thousands of Federal, State, local and special law enforcement units all over the country. Nowhere is there even a clearinghouse to which the police or prosecutors can turn for advice on where criminal intelligence can be found."

Title I would, I submit, fill this criminal intelligence gap. The Office on Syndicated Crime, operating under the strict control of the Attorney General, would serve as the nerve center for a coordinated war on racketeering. It would act as the conduit for maintaining a constant flow of communications between law enforcement units. The present splintered effort, divided as it is between over a score of Federal agencies and countless local ones, would be unified by a common intelligence source. With adequate safeguards, the office should be able to contribute materially to bringing organized crime under control.

Section 102(e) would confine the operations of the Office to "substantial concerted activities in, or affecting, interstate or foreign commerce, where any part of such activities involve violations of law, Federal or non-Federal." Thus, for the first time an intelligence office of the U.S. Government would be vested with the responsibility to oversee all of the activities of interstate crime, both legitimate and illegitimate.

Few people in this country realize how far organized crime has permeated our society. The massive past gains of organized criminals have been channeled into a wide variety of legitimate business activities. The hotel one stays at or the union a man belongs to may be tied in with organized crime.

Even our foreign relations may be affected. I am informed that the rise of Fidel Castro in Cuba may have been directly financed by certain of our crime moguls. Their alleged purpose was to shut down Havana gambling establishments which were cutting into the profits of certain of their stateside establishments. While I cannot vouch for the authenticity of this story, it is a fact that the Havana competition has been shut tight since Batista was deposed. If organized crime is capable of engineering such a coup with such deleterious effects to the national interest, we cannot afford to continue an ostrichlike stance with regard to it. We must set up an information and intelligence unit which will enable us to cope with the problem.

I should like to offer for the record, at this time, a copy of the report of the Attorney General's Special Group on Organized Crime in the United States, submitted February 10, 1959.

Although Attorney General Kennedy has not urged the establishment of such a crime clearinghouse, I hope that when he has had an opportunity to study title I, he will give it his support. We and he must remember that the man who occupies the position of Attorney General will not always possess the power of suasion to insure intra-agency cooperation that Mr. Kennedy can, backed up by the power of the White House.

#### TITLE II

I have been deeply disturbed for a number of years by a series of some 21 gangland style killings over the last 20-some-odd years which have taken place in my own district. That the perpetrators of these murders remain unpunished lend credence to the presumption that they are a part of an interstate terroristic criminal conspiracy.

Killers, shipped into a State, carry out their nefarious function and within hours are beyond the local jurisdiction. Unable to extend their investigations beyond their borders, due to inherent jurisdictional limitations, and additionally due to logistic difficulties, the terrorists escape to kill again.

Nor is the FBI presently authorized to act when an interstate terroristic offense has been committed. This was illustrated to me when I requested the FBI to investigate one killing in my district. I was advised that even though the killing was of a gangland nature, there was no Federal crime involved, and that, therefore, the Federal law enforcement authorities had no jurisdiction in the matter. Even when the services of the FBI were requested by local law enforcement officials, the reply was in the negative since no Federal crime was involved.

The enactment of title II of my bill will cure this defect. The FBI will no longer be shackled and a nationwide dragnet can be put into operation. Coordinated with the intelligence activities of the Office on Syndicated Crime the national and international kill-for-money syndicate could be stamped out.

#### TITLE III—CRIMINAL EXPENDITURES

In the 86th Congress I introduced H.R. 7394 for the purpose of disallowing tax deductions for racketeer business expenses. I submitted a similar bill in this session of Congress and incorporated such a proposal in my omnibus bill as title III. The purpose of this provision is to deny persons engaged in illegal activities, such as gambling and racketeering, certain tax deductions, which are allowed to legitimate businesses. These deductions were given a semblance of legality by the decision of *Commissioner v. Sullivan* (356 U.S. 27). In that case the Supreme Court refused to disallow such deductions on the part of gamblers and criminals in the absence of a specific declaration by Congress. It is time for Congress to make that declaration.

This provision was recommended early in the session to the Congress by former Attorney General Rogers. It certainly merits the serious consideration of this subcommittee. It may be argued that this matter is not properly within the jurisdiction of the Judiciary Committee, but I cite the omnibus civil rights bill as precedent for our consideration of this rather simple amendment to the Internal Revenue Code.

#### TITLE IV—TRANSMISSION OF GAMBLING INFORMATION

One of the most lucrative of organized crime's illegal operations is gambling. The untold billions which flow into the coffers of racketeers by this means is staggering to the imagination.

But gambling cannot operate in a vacuum. The results of sporting events, placing of bets and the like must be communicated to interested parties by some means—usually wire or radio. Where such communications cross State lines, law enforcement facilities of the Federal Government should be authorized to go to work.

Title IV of the Antiracketeering Act is designed to do just that. It would compel each person required to pay a special gambling tax under the Internal Revenue Code to sign an affidavit whether he has or will engage during the coming year in the interstate transmission of gambling information. Severe penalties are provided for failure to comply with its provisions.

Such information would be of invaluable assistance to local law enforcement authorities. It would likewise be of material help to the Office on Syndicated Crime in the performance of its intelligence mission.

## TITLE V—GAMBLING DEVICES

Another provision dealing with gambling incorporated into my omnibus bill is title V. Under its provisions the 1931 law prohibiting the interstate transmission of slot machines would be broadened to include any other device manufactured specifically for gambling purposes. Shipments of such devices out of the country would likewise be prohibited.

As Attorney General Rogers declared in submitting a similar bill to the Congress earlier this year:

"Experience with the enforcement of (the Johnson Act) has demonstrated a need for its amendment in several respects." Those amendments are embraced in title V.

Again, this proposal is directed primarily at syndicated gambling activities of a nationwide scope. To date such nationwide activities have proven themselves beyond the reach of traditional legal procedures. This measure, incidentally, has received the approval of several interested agencies of the Government.

## TITLE VI—WAGERING PARAPHERNALIA

This title of my bill would make it a felony to send or carry knowingly in interstate or foreign commerce any wagering paraphernalia or device used, adapted, or designed for use in bookmaking, wagering pools with respect to a sporting event, numbers policies, bolita, or other similar illegal games.

Bookmakers and lottery and pool operators presently thrive on widescale interstate operations. In lending his support to this provision, Attorney General Kennedy stated on April 6 of this year:

"Jurisdictional limitations have handicapped State enforcement attempts and statutory limitations have handicapped the Federal Government. This measure, a slight modification of an earlier one, would untie the hands of the Federal Government."

I have urged the enactment of a wagering paraphernalia provision in the last two Congresses, and Attorney General Rogers submitted such a proposal early this session as part of his anticrime program. I am happy that the new Attorney General has likewise lent his support to it.

## TITLE VII—IMMUNITY OF WITNESSES

One of the great obstacles to waging successful war against organized crime arises when key witnesses plead the fifth amendment. In effect, the constitutional protection is utilized by organized criminals to effectuate a conspiracy of silence in order to tie the hands of Federal law enforcement officials.

Title VII would provide the means to overcome this difficulty. Under its provisions, small-fry underlings in the rackets could be granted immunity from prosecution in order to compel them to give testimony, thus enabling the Federal Government to secure much information needed to reach the upper echelons of crime syndicates. Because self-incrimination would be avoided, the fifth amendment could not be used to shield the conspiracy.

Title VII would also apply in labor racketeering cases. Both the present and past Attorney Generals have endorsed similar proposals. In fact, both have submitted communications to this committee urging enactment of immunity statutes.

## TITLE VIII—EXTENSION OF THE FUGITIVE FELON ACT

Title VIII would broaden the Fugitive Felon Act to bring within its coverage a number of serious crimes not presently included. Under existing law, anyone who moves in interstate or foreign commerce with the intent to avoid prosecution or custody or confinement after conviction under the laws of the State from which he flees for certain specified crimes, is guilty of a Federal crime.

The new proposal would broaden the scope of the act so as to include all felonies or offenses punishable by death or imprisonment for a term exceeding 1 year under the laws of the place from which the fugitive flees. It would also include flight to avoid giving testimony in such criminal proceedings.

If enacted, the proposed amendment would permit local law enforcement agencies to seek Federal assistance in locating offenders who have fled the jurisdiction to avoid prosecution, custody, or confinement. I am informed that the FBI will not be unduly burdened by this increase in its responsibilities and that criminal law enforcement in the States will be materially supplemented.

## TITLE IX—WIRETAPPING

By far the most controversial proposal of the Antiracketeering Act of 1961 is title IX, relating to wiretapping. One of the issues over which the Founding Fathers fought the War for Independence was the security of the individual from "unreasonable searches and seizures." The fourth amendment was written into the Constitution to protect against such unwarranted intrusions upon a citizen's right of privacy.

The fourth amendment provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The security granted by the constitutional concept that each man's home is his castle is not absolute, however, as proved by the fact that no immunization from searches and seizures was contemplated by the Founding Fathers. What they afforded was a constitutional protection against unreasonable intrusions of privacy only. This concept they embodied in the Constitution which outlines the *sine qua non* procedures for the issuance of search warrants for what might be termed "reasonable searches."

In recent years, the concept against "unreasonable" searches has run head on into new technology. The advent of telephone and radio, on the one hand, and the development of wiretap and revolutionary eavesdropping techniques, on the other, have created serious new problems. The fearful specter of a 1984-like society intruding upon each citizen's constitutional castle is not one which can be lightly ignored.

But in our zeal to avoid abuses of new techniques, we must not go overboard. The Founding Fathers had experienced unreasonable searches and they guarded against them in a most reasonable manner. They could have provided for constitutional bans against all searches, but they were far too wise to follow that extreme course. Rather they tempered their approach to suit the legitimate needs of a free society.

It is my conviction that we cannot be less realistic than they were. Following the standard they set for us, we must protect against unreasonable intrusions occasioned by irresponsible use of these techniques, while, at the same time, insuring the Government reasonable means to protect itself and our citizenry. As Alan F. Westin said in a recent article in commentary:

"To accept the argument that conversations of innocent persons might be overheard as reason for immunizing all telephone or room conversations from authorized search is to create an island of absolute privacy which is at variance with the American tradition, not in keeping with it."

Mindful, as I am, of the serious threat of organized and syndicated crime to our institutions and conscious, as I am, that the threat must be effectively combated if we are to survive as a free society, I have incorporated title IX into the Antiracketeering Act of 1961.

Wiretapping, without proper authorization, and unauthorized disclosures secured from such wiretapping, are specifically prohibited by title IX and severe penalties are provided.

In certain cases, however, the Attorney General is authorized to intercept telephone conversations to obtain evidence of syndicated crime. To do so, a well-thought-out statutory procedure must be followed with the ultimate decision on whether a wiretap will be authorized or not resting in the courts.

Section 2507 fills the law enforcement gap created by the confusion of decisions as to the effect of interceptions by State officers. Such wiretaps, if made pursuant to a court determination of reasonableness, are specifically held not in violation of Federal law.

To my mind, title IX is a necessary and reasonable approach to a most serious problem. It is one that is certainly consistent with the approach of the Founding Fathers embodied in the fourth amendment. As with that provision, the constitutional castle concept is preserved from intrusions which are "unreasonable" only.

## TITLE X—OBSTRUCTION OF INVESTIGATION

No crackdown on organized crime can succeed without the cooperation of a citizenry freed from fear of reprisal from gangland elements. As the Attorney General stated, "Experience has shown that potential witnesses are often intimi-

dated, threatened, or coerced when a matter is in its investigative state, prior to the initiation of a proceeding."

As the law now stands, the obstruction of justice statutes prohibit the intimidation of witnesses after formal proceedings have begun. But during the investigative state the potential witness is not so protected. Thus, by intimidating witnesses during an inquiry, the subsequent initiation of formal proceedings may be effectively thwarted, without violating the obstruction prohibition. In effect, because the gap exists, the Federal Government is put into the position of sanctioning what might be called back-door obstructionism.

Attorney General Kennedy has advocated that the situation be remedied and I support him in his effort. I fear, however, his proposal may be too broad for comfort, for it would not only prohibit intimidation, threats, and coercion to obstruct justice, but would also carry severe penalties for the furnishing of false or misleading information to any Government department or agency engaged in a lawful inquiry. While I am in sympathy with the end the Attorney General seeks to achieve with this latter provision, I am fearful that his approach is too dangerous to sanction. The grant of such authority, unless zealously restricted, might well constitute a long, long step toward a gestapo-like governmental control over the people.

In my opinion, to hold a citizen criminally liable for giving false information during an investigation when that information was not even given under oath could result in deterring witnesses from volunteering much needed information. In case of statements under oath, present laws adequately deal with the problem.

Title X of my bill, therefore, deletes that portion of the Attorney General's proposal. It is restricted to prohibiting obstruction of inquiries or investigations by intimidation or injury to any person and is further restricted to purposes of this act.

I believe this proposal would give the Government an effective investigative tool against organized criminal elements, while, at the same time, protecting our people from unwarranted governmental persecution.

#### TITLE XI—INTERSTATE TRAVEL IN AID OF SYNDICATED CRIMINAL ACTIVITIES

The final title of my Antiracketeering Act deals with unlawful travel in aid of syndicated criminal activity. Patterned after an earlier bill introduced by me in the 86th Congress, adapted by Mr. Kennedy, this proposal would, in the words of the Attorney General, "impede the clandestine flow of profits from criminal ventures and \* \* \* bring about a serious disruption in the farflung organization and management of coordinated criminal enterprises."

Title XI makes illegal the crossing of State lines or national boundaries to promote, manage, establish, carry on or distribute the proceeds of syndicated criminal activities. As defined, such activities comprehend—"Substantial concerted activities in, or affecting, interstate or foreign commerce, where any part of such activities involve violations of law, Federal or non-Federal."

As modified, title XI is broader, while, at the same time, narrower than the approach recommended by the Attorney General, since only organized criminal activities are comprehended by the prohibition on unlawful travel.

Additionally, the provision has been further limited to nonviolent activities since "terroristic" offenses have been adequately dealt with in title II of this act.

Conclusion: I am well aware that my proposed omnibus bill is not a perfect solution to all of the crime problems confronting us. However, it is a start in the right direction.

Its concern is with organized crime and how to cope with it. It proposes some new and some old approaches to the problem. If enacted into law and properly implemented, it will provide law enforcement authorities with means to begin the job of ferreting out and destroying organized and syndicated crime in this country.

If it is found to be wanting in the future, and further augmentation is needed, the Congress can confer such additional authority. But legislative action is needed now on the proposals before us.

Needless to say, I am delighted that the Attorney General has accepted some of the basic concepts embodied in H.R. 6909. I hope and trust that the Department of Justice will give serious consideration to the additional ones suggested.

I am of the opinion that this Congress would be derelict in its duty if it did not go forward with a comprehensive, well-thought-out, anticrime bill this session. I submit that the Antiracketeering Act of 1961 shows the way.

One final word of warning: "If organized gangsterism is not rooted out of our society, we can be sure our freedoms will be."

Mr. CRAMER. I just have one or two other titles which I have not discussed which were not recommended by the Attorney General. Then of course I will answer any questions that the chairman wishes.

You will note, of course, we previously discussed briefly the title on terroristic offenses—title II, which has the objective of getting at these specific types of crimes that are of a violent nature.

I have been disturbed about these 20-odd killings in my district. The murderers remain unpunished. That lends credence to the presumption that they are part of an interstate terroristic criminal conspiracy. The local authorities have said they think they are.

Killers are shipped into a State, carry out their nefarious function, and within hours are beyond the local jurisdiction. Because of the inability of local law enforcement officials to extend their investigations beyond their borders due to inherent jurisdictional limitations and additionally due to logistics difficulties, the terrorists escape to kill again. That is how Murder, Inc., does business.

Nor is the FBI presently authorized to act when an interstate terroristic offense has been committed. This was illustrated to me when I requested the FBI to investigate one killing in my district a couple of years ago which I mentioned—Benny Lazera. I was advised that, even though the killing was of a gangland nature, there was no Federal crime involved and that therefore the Federal law enforcement authorities had no jurisdiction in the matter.

Even when the services of the FBI were requested by local law-enforcement officials, the reply was in the negative, since no Federal crime was involved.

Enactment of title II of my bill, I believe, will cure this defect. The FBI will no longer be shackled and a nationwide dragnet can be put into operation if this title is adopted.

Coordinated with the intelligence activities of the Office on Syndicated Crime—the point I am trying to make is, this shows how this bill has a total thrust. Most of the sections are dovetailed into other sections and fit in together to give a total picture. Coordinated with the intelligence activities of the Office on Syndicated Crime, the national and international kill-for-money syndicate could be stamped out. I think that that is an essential section to be considered by this committee.

The gambling device section, Mr. Chairman, of course, is somewhat different from the paraphernalia proposal of the chairman and of the present Attorney General. Title V, page 10, the proposal I have made, follows Attorney General Rogers' recommendation.

The gambling device proposal is primarily a registration statute. It avoids the problem, raised by the question asked yesterday, when gambling devices are sent into areas where they are legal.

There is precedent for this approach. The present Johnson Act provides a prohibition against slot machines. But yet it is legal to ship them into Nevada and some of those other States where gambling is legal. So there is a precedent for this bill.

Therefore, I think title V of my bill is a valuable, effective, and reasonable antigambling addition to the paraphernalia proposal advocated by Attorney General Kennedy and introduced by the distinguished chairman and myself.

Just let me point out that the wiretapping section, title IX, page 20, in my opinion, is essential if the communications section is going to be carried out. It must have "teeth" in it. Wiretapping is the only way I know to give it "teeth." Otherwise I don't think it will accomplish the objective.

As you will note on page 23, again on page 24, and again on page 25, you will see that the wiretap proposal is limited to syndicated criminal activities.

I also point out that it deals with the question of authorizing the States, through statutes, to authorize wiretapping as contained on the bottom of page 26, line 15:

No law of the United States shall be construed to prohibit the interception by any law-enforcement officer or agency of any State or political subdivision in compliance with the provisions of any statute of such State of any wire, radio communications—

and so forth—again carrying out the recommendations of the Attorney General.

I was happy yesterday when the Attorney General suggested that, if the communications section is to be carried out, this would be an effective weapon to do it. Frankly I don't know how else it could be done.

The interstate travel in aid of syndicated crime proposed, as recommended by the Attorney General, is similar to the proposal I made some 3 years ago. I think such a proposal is essential. But I have limited its scope to syndicated criminal activities. Again you have the problem of definition and again I think the basic approach that I proposed is a sounder one.

On the communications section, just let me give this one last comment in trying to be helpful—that the communications proposal made by Senator Wiley, similar to the one I have made in my bill and the same as the one by Mr. Miller of New York, is the recommendation of the American Bar Association made after a lengthy study of this problem. They too are equally interested in preserving the rights of the individual and freedom of speech and so forth.

Their recommendation was that something had to be done in this field, and this is the approach—a much broader approach than that recommended by Attorney General Kennedy.

Mr. TOLL. Will the gentleman yield for a question?

Mr. CRAMER. Just one other comment on the obstruction of justice section. Again we tried to clear up that situation. This is the only manner in which this provision is before the committee—on page 27. This is consistent with the Attorney General's adjustment recommendation containing subparagraphs (a) and (b), and eliminating the perjury or untruthful statement subsection (c). But again it is not limited other than "lawful investigation or inquiry pursuant to this act."

In other words, if the Attorney General, with this elite force, is trying to get information and this information is denied by threats of force or violence or actual use of force or violence in obstructing this effort to get this needed information, this section comes into play.

That is the way, I think, to put some teeth into it.

Therefore, this title X fits into the total picture.

The CHAIRMAN. That is equally applicable to giving misinformation.

Mr. CRAMER. Yes, sir. The chairman and I are in wholehearted agreement in having the same reservations concerning it. If you don't have this limitation, the Attorney General's recommendation is dangerous—

The CHAIRMAN. We went over that yesterday.

Mr. CRAMER. Therefore I have limited it to the purpose of fighting organized crime.

In conclusion, Mr. Chairman, just let me say, in my opinion—and it was my opinion last session of Congress and previously—that the Congress should take, not action alone, but effective action. In my opinion, the only effective action is to take a serious look at H.R. 6909 and the provisions contained in it, and vote out a strong omnibus bill that will effectively fight organized crime in America, a strong bill to do the job.

Frankly, Mr. Chairman, that will be my objective, to try to see that an adequate bill is voted out. I think the Congress has been derelict in not doing it in the past.

The CHAIRMAN. Thank you very much. Of course we are going to hear you at even greater length when we go into executive session in the full committee.

Mr. CRAMER. I thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Robert H. Knight, General Counsel of the Treasury Department.

**STATEMENT OF ROBERT H. KNIGHT, GENERAL COUNSEL, TREASURY DEPARTMENT; ACCOMPANIED BY ALAN LONG, DIRECTOR OF INTELLIGENCE, INTERNAL REVENUE SERVICE**

Mr. KNIGHT. Mr. Chairman and members of the committee; I appreciate this opportunity to testify in behalf of the Treasury Department before your committee with respect to the program sponsored by the Attorney General to assist in fighting organized crime and racketeering.

While the effect of the bills pending before your committee on this subject has only limited direct application to the responsibilities of the enforcement agencies of the Treasury Department, we consider support of the Attorney General's program to be essential. The Treasury Department's interest is twofold: First, as you know, the Internal Revenue Service, at the request of the Attorney General, is cooperating with his drive against organized racketeering both because of the national interest served by the program and because criminal evasion of taxes and racketeering go hand in hand.

Secondly, the Treasury Department is heavily engaged in the business of law enforcement, as I am sure is well known to all of you. The Secret Service protects the President and his family and safeguards American currency and obligations against counterfeiting and forgery.

The Bureau of Narcotics wages a continual war against the traffickers in narcotics and marihuana. The Bureau of Customs polices our ports and airfields to prevent smuggling. The Coast Guard performs numerous law enforcement activities on the seas and in our harbors. Special agents and investigators of the Internal Revenue Service keep a vigilant watch for tax frauds, violations of our liquor and tobacco tax laws, and the National Firearms Act.

Thus, the Treasury Department has had considerable experience in dealing with organized crime and racketeering and is well aware of the importance of strengthening our Federal enforcement agencies in their war against major law violators. This experience leads the Treasury Department to support the legislative program sponsored by the Attorney General in connection with organized crime and racketeering.

We believe that the proposals will prove a valuable weapon in the arsenal of ammunition against major criminals. Since the activities of criminals often cover many offenses and are not compartmentalized in the manner of criminal statutes, it is apparent that the successful accomplishment of the Attorney General's objectives will inevitably aid the objectives of the Treasury Department.

Although it is not one of the bills before this committee today, one measure that would be of direct Treasury assistance is the Attorney General's proposal to prohibit the obstruction of justice by protecting witnesses who seek to cooperate with departments or agencies of government conducting lawful inquiries or investigations.

For example, the Alcohol and Tobacco Tax Division of the Internal Revenue Service reports that their investigations have on occasion been hampered because of the inadequacy of our present laws to protect witnesses.

I am advised that the Narcotics Bureau has had at least five or six informers seriously injured or killed in the past few years—again because of the inadequacy of our ability to protect witnesses.

We think that this measure urged by the Attorney General would strengthen our law enforcement agencies in this needed area.

To conclude, the Treasury Department strongly supports the Attorney General's program and we hope that this committee will give the proposals favorable consideration.

The CHAIRMAN. May I ask this question, relative to the case cited by the Supreme Court concerning embezzlement?

The Court held that income had to be reported and taxes had to be paid thereupon. Is that decision broad enough to cover income from all gains, illegally obtained?

Mr. KNIGHT. I would have to study it further, Mr. Chairman, to give you a detailed answer. There are areas, however, where illegally acquired gains would not be taxable. Things like money which is stolen is not, for example, taxable, to the thief.

There are other areas, too, but this is a fairly technical area of the law. For example, there are problems, as I am sure you are aware, where title to illegally acquired property has not passed and the gains to the acquirer may not be taxable.

The CHAIRMAN. Is it the practice of the Internal Revenue Bureau to allow expenditures to be deducted which have been used in connection with income illegally obtained?

Mr. KNIGHT. I will have to ask Mr. Long here, from the Internal Revenue Service, to help me on this.

Mr. LONG. Yes. The Tax Court has allowed that expense.

The CHAIRMAN. Will you identify yourself?

Mr. LONG. Mr. Long, Director of Intelligence of the Internal Revenue Service.

In answer to your question, Mr. Chairman, I would say "Yes." The Tax Court has allowed deductions for the business expenses of

an illegal business such as rent, salaries, wages, telephone service—things of that kind—which are paid out in carrying on business activity, even though the activity itself may be illegal.

The CHAIRMAN. Where the man pays a bribe, you would not let that be, would you?

Mr. LONG. No. That is something else.

Mr. McCULLOCH. I would like to ask a question there.

The Department has now recommended that those alleged business expenditures be disallowed and a message has come to the Congress and a bill is before the Ways and Means Committee to that end. Is that correct?

Mr. LONG. I don't believe it has gotten that far; no, sir.

Mr. KNIGHT. We have not submitted a bill as yet.

Mr. McCULLOCH. Have you made a recommendation in that field?

Mr. KNIGHT. I believe that is still being studied.

Mr. LONG. Yes.

Mr. McCULLOCH. Have you had occasion to look at title 3 of H.R. 6909, the omnibus bill, sponsored by our colleague, Mr. Cramer? Page 6 of the bill?

Mr. KNIGHT. Mr. Chairman, no. We have not yet received this bill in the Treasury Department. We have not had occasion to study it as yet.

Mr. CRAMER. Will the gentleman yield?

Mr. McCULLOCH. Yes.

Mr. CRAMER. You are familiar with the Attorney General's recommendation of the last session—of the last Congress—and again in January of this Congress, are you not? The Attorney General's recommendation to disallow criminal expenditures?

Mr. KNIGHT. I understand that recommendation has been made.

Mr. CRAMER. And title 3 is exactly that recommendation.

Now, is it not true that the Treasury, in the last session, reported favorably on such a proposal to the Ways and Means Committee?

Mr. LONG. I am just not familiar with the nature of the report of the last administration. I have not come prepared to discuss or was even aware of this bill until this morning.

Mr. McCULLOCH. I should like to ask this question.

Is this matter under study by the Department now?

Mr. LONG. Yes. I believe it is.

Mr. McCULLOCH. Do you expect that you will have a recommendation for us without unnecessary delay—I won't say when, positively—rather promptly?

Mr. KNIGHT. This has not as yet, so far as I am aware, come from the Internal Revenue Service to the Treasury Department, as such, and the state of the preparation I am not prepared to report on.

I will submit a memorandum to the committee on that—on the status of it.

Mr. TOLL. May I inquire sir, how many States of the Union permit gambling and legalized racing—horses or dogs?

Mr. KNIGHT. Mr. Toll, this type of activity is not under the enforcement agencies of the Treasury Department. I would be happy to try to find out that information for you if you wish.

Mr. TOLL. There are already places like Las Vegas and other communities that have businesses that are legal.

Mr. KNIGHT. The income would be taxable whether legal or illegal.

Mr. TOLL. I am just talking about the legal sources.

Mr. KNIGHT. I will be glad to try to obtain something like that for you on that. I don't know how many States have legalized gambling or what forms of gambling are legalized.

Mr. TOLL. There is the problem of these syndicates getting in those areas, also.

How would you approach the supervision of seizure, and elimination of these syndicates from the areas where the operation is legal?

Mr. KNIGHT. I have just been advised by Mr. Long that the legal operations of parimutuels are not subject to the wagering tax. This is an area that is really within the jurisdiction of the Attorney General. The elimination of racketeers in the gambling business—and I am not prepared to comment.

Mr. McCULLOCH. I might say, Mr. Chairman, that this might be one of the fields that our Special Subcommittee on Taxation might look into.

Mr. TOLL. The bill seems to call for unlawful operations and is likely to get into those lawful operations.

Mr. FOLEY. Let me ask you this. Do you have a tax on jukeboxes, for instance?

Mr. KNIGHT. There is a tax on jukeboxes; yes.

Mr. FOLEY. Phonograph records, too?

Mr. KNIGHT. Do you mean a jukebox that contains phonograph records or the records themselves?

Mr. FOLEY. The box itself, as separated from the records.

Mr. KNIGHT. I believe there is a tax that covers the box; yes.

Mr. FOLEY. That covers mostly all vending machines?

Mr. KNIGHT. That is correct.

Mr. FOLEY. How about the records, as distinguished from the machine itself?

Mr. KNIGHT. There is an excise tax on records.

Mr. FOLEY. On records?

Mr. KNIGHT. Yes.

The CHAIRMAN. Thank you very much. We appreciate your coming.

**STATEMENT OF ADAM G. WENCHEL, OFFICE OF THE GENERAL COUNSEL, POST OFFICE DEPARTMENT, AND HENRY MONTAGUE, CHIEF POSTAL INSPECTOR, POST OFFICE DEPARTMENT**

Mr. WENCHEL. I am Adam G. Wenchel, Office of the General Counsel, and I am accompanied by Mr. Henry Montague, the Chief Postal Inspector.

We have no prepared statement, Mr. Chairman.

The CHAIRMAN. You have no prepared statement. We did, however, file a letter report on H.R. 6571 and H.R. 3246 and I believe Mr. Montague would like to read that into the record with your permission, sir.

Mr. HOLTZMAN. Before Mr. Montague proceeds, I would like the committee to know he is a constituent of mine, a very high class public official. We are delighted to have him here as a colleague.

Mr. MONTAGUE. Thank you, Congressman.

Mr. Chairman, this letter was addressed to you on May 16, 1961. It reads:

This is in reply to your request for reports on H.R. 6571, and H.R. 3246, similar bills to provide means for the Federal Government to combat interstate crime and to assist the States in the enforcement of their criminal laws by prohibiting the interstate transportation of wagering paraphernalia.

The bills would provide severe penalties for anyone, except a common carrier, engaged in interstate transportation of wagering paraphernalia.

It is noted that the proposed bills do not amend chapter 51 of title 39, United States Code, which deals with nonmailable matter.

The articles covered by the bill are presently nonmailable if mailed in connection with a specific lottery. Other articles covered by the bills are presently mailable. If, as I think it should, the Congress prohibits the interstate shipment of all these articles, it should also prohibit their transmission through the mails. This action would allow the postal service to complement activities of the Department of Justice when the mails are involved. Accordingly, I suggest a new section 2 be added to each of the bills as follows:

"Sec. 2. Section 1302 of title 18 United States Code is amended by deleting 'all of such prizes—' in the fifth paragraph and inserting in lieu thereof 'all of such prizes:'"

"Any article described in section 1952 of this title—"

Due to the urgency of the request, this report has not been cleared by the Bureau of the Budget.

Sincerely yours,

H. W. BRAWLEY,  
*Acting Postmaster General.*

Mr. Chairman, may I say that we are in full accord with and fully support the Attorney General in his fight against organized crime.

The CHAIRMAN. We are all against crime, and it is a question of how we fight crime. We thought we would get some more detailed criticisms of the present established methods and the suggested methods of fighting organized crime. We are all for motherhood; we are all for childhood; we are all against sin; and we want to get something more specific from the Department rather than a broadside general approval of what the Attorney General's objective may be.

Mr. MONTAGUE. We feel that this is something positive and specific; that the mails were not included in this bill before and we think they should be.

Mr. FOLEY. On that point, Mr. Montague, it is perfectly lawful to send punchboards in the mail?

Mr. MONTAGUE. Correct; That gives us a lot of trouble because of a Supreme Court decision. It is not a going lottery. There is nothing we can do about it.

Mr. FOLEY. Do you know whether or not this statement is true? The Federal Trade Commission has worked on this thing, on false and misleading information in publications and ads, to children?

Mr. MONTAGUE. We have complaints that a child would send to a company for some innocuous thing, such as a toy airplane. Later, he might get an advertisement, including a punchboard in it.

The CHAIRMAN. Suppose I send through the mail, a roulette wheel, express—mail express.

Is that a violation of the present statute?

Mr. MONTAGUE. No.

The CHAIRMAN. It is not a violation?

Mr. MONTAGUE. Not at this time.

Mr. HOLTZMAN. Would the additional paragraph you suggest cover such a situation?

Mr. MONTAGUE. Yes, it would. We think it would.

The CHAIRMAN. Suppose I sent a toy roulette wheel to a child, under the paragraph that you mentioned. The father might use that roulette wheel for his own purposes; it might not be untoward purposes. What would happen then?

Mr. MONTAGUE. I think you would have to take the circumstances into consideration. They would have to govern, I would say, in that case.

Mr. TOLL. May I inquire what going lotteries have been detected, we will say in recent years, by the Post Office Department?

Mr. MONTAGUE. Our principal source of complaint has been the punchboards. Also, we feel that if the shipping of wagering paraphernalia is made a crime, as far as other interstate communication is concerned, and the mails are not included, there may be a shift from other means of interstate communication to the mails. That is another point for including the mails in the legislation.

Mr. TOLL. How about the annual importation of Irish Sweepstake tickets?

Mr. MONTAGUE. Of course, they come in by other means, as well as coming through the mails.

Mr. TOLL. Is there any way of detecting those?

Mr. MONTAGUE. If we get complaints, the General Counsel issues a fraud order against the sender of the tickets to prevent the money going out of the country to such people.

Also, if we have any indication that a man is a dealer, in that type of a lottery, he is prosecuted if we can develop the evidence.

The CHAIRMAN. May I ask this? With that language that you suggested, if we adopt that and I send a punchboard through the mail, would that ipso facto get me in the toils of the law?

Mr. WENCHEL. May I answer that, sir? To the same extent as if it were shipped otherwise in interstate commerce. This language would not add, would not broaden the proposal other than to say that this would be a postal offense, if you used the mails, rather than sending it by express.

The CHAIRMAN. But I mean, it would be a postal offense then, to send a punchboard through the mail under your suggestion?

Mr. WENCHEL. Yes. Yes. That is correct.

The CHAIRMAN. Just tell us why that would be so venal, as to constitute an offense, any punchboard. I don't know too much about punchboards. Tell me about them.

Mr. HOLTZMAN. Might it be, Mr. Chairman, because it would give you an area where you had jurisdiction, so that you could approach the individuals with a view to resolving it, if it was unimportant, or proceeding further if it became a real problem.

Is that not the basic reason for it?

Mr. MONTAGUE. That is correct. As I said before, in each of these cases, the circumstances would go far toward determining whether there would be a prosecution. You would run into the same question on any interstate commerce case that you would run into as far as the mails are concerned.

The CHAIRMAN. Tell me what is so strange about a punchboard.

Mr. MONTAGUE. It would depend on the source of the punchboards; if they were sent out by some organized group, and you had evidence that the proceeds were going to organized crime, then it would be a violation. If it were something innocent—

The CHAIRMAN. I did not put it that way. I said, just sending a punchboard through the mail without anything else, would that involve me in violation of the law, with your language?

Mr. WENCHEL. It would be considered wagering paraphernalia, I would think, under this statute.

The CHAIRMAN. Why? What makes a punchboard a wagering apparatus? Tell me about it.

Mr. MONTAGUE. A punchboard in itself, is set up for chance. Usually, you have certain names on the board. There may be 100 names. You go into a candy store or some other place of business where they have a punchboard. You punch out one of the names. It may cost 50 cents or a dollar. You pay the owner of the board or the man who is in business the designated fee which you are supposed to pay. When all the punches are out of the board, they pull off a label from someplace on the board which shows the winning name.

It is a chance.

The CHAIRMAN. That goes beyond the content of my question. That involves something other and besides and beyond merely mailing the punchboard through the mails. That involves other circumstances.

I asked the question whether, ipso facto, mailing under your language a punchboard would constitute an offense against the postal law?

Mr. WENCHEL. Yes, it would.

The CHAIRMAN. Why? Well, now, why?

Mr. WENCHEL. It would under this bill. It does not, now. It would under the bill as we would propose to amend it.

Mr. HOLTZMAN. May we have the language of your addition, just briefly?

Mr. WENCHEL. It is very brief. In effect, it adds to the section in the criminal code on the mailing of lottery matter. It adds as an offense the mailing of any article described in section 1952 of this title which would be the section which is added by H.R. 3246 and H.R. 6571.

Mr. CRAMER. In other words it takes the same definition and makes it applicable by mails?

Mr. WENCHEL. Incorporates by reference.

Mr. HOLTZMAN. In other words, the mailing of the board, as distinguished from a punchboard, would not be a crime? The fact that it is a punchboard and is set up for purposes of chance and gambling would be the same yardstick as used in every other kind of gambling apparatus?

Mr. WENCHEL. That is correct.

Mr. CRAMER. May I ask a question?

How do you come to the conclusion that a punchboard would be included, if it does not relate to a book or use in bookmaking, or wagering pools in a sporting event? It would not relate to that. "Or in a numbers, policy, bolita or similar game." It would not relate to that.

Mr. WENCHEL. I believe it would be a game.

Mr. CRAMER. Numbers game?

Mr. WENCHEL. Game similar to numbers, policy, and so forth.

Mr. CRAMER. Do you mean you think a punchboard is a similar game to numbers, policy and bolita?

Mr. WENCHEL. In my opinion, it is, sir.

Mr. CRAMER. I disagree with you. I just don't think there is any relationship between it and numbers, policy and bolita. They are very well-established types of gambling devices and a punch board is not a similar game.

Mr. HOLTZMAN. Mr. Montague, do these punchboards ever reflect sporting events or are they always names?

Mr. MONTAGUE. I have not seen any which reflect sporting events.

Mr. FOLEY. May I ask you this, Mr. Montague?

In the course of your investigation, particularly some of these gambling apparatuses where it is made and manufactured, don't you find out from investigation that these companies who manufacture marked cards, loaded dice, and punchboards, they are all made by the same firms, most of them?

Mr. MONTAGUE. We have had that experience. We have had marked cards and loaded dice going through the mail. We have not been able to do anything about them for the same reason mentioned before. I believe a previous question asked was, What is giving us the most difficulty? And my response was the punchboard at the present time, but we have had experience with these other types of paraphernalia.

Mr. TOLL. May I inquire, sir, whether there are any numbers issued through the mails in any section of the country? Numbers, means this numbers business in the numbers racket?

Mr. MONTAGUE. Not to my knowledge.

We have had cases where they tried to make their returns through the mailbox, where the runner would drop his report and the proceeds of the numbers into the mailbox. We have had cases like that but we have not had any actual numbers going through the mail, as far as we know.

The CHAIRMAN. Well, thank you very much.

Mr. MONTAGUE. Yes, sir.

The CHAIRMAN. Our final witness this morning will be Mr. Paglin, the General Counsel of the Federal Communications Commission.

You may proceed, sir.

**STATEMENT OF MAX D. PAGLIN, GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION, AND JOHN R. LAMBERT, CHIEF TELEGRAPH DIVISION, COMMON CARRIER BUREAU, FEDERAL COMMUNICATIONS COMMISSION**

Mr. PAGLIN. Mr. Chairman, my name is Max D. Paglin. I am General Counsel of the Federal Communications Commission.

The CHAIRMAN. Will you identify the two gentlemen on your right and left?

Mr. PAGLIN. The gentleman on my right is Mr. John R. Lambert, Chief of our Telegraph Division of the Common Carrier Bureau.

On my left is Mr. John Hardy, an attorney in the General Counsel's Office.

We have a statement, if the chairman would permit it.

We are addressing ourselves today on behalf of the Federal Communications Commission to the bills H.R. 3022 and H.R. 5230, and

what I understand was originally H.R. 6573, but it was reintroduced as H.R. 7039.

H.R. 3022 and H.R. 7039 are related bills aimed at the prevention of interstate transmission of gambling information. The third bill, H.R. 5230, provides penalties for the use of interstate commerce in the furtherance of conspiracies to commit organized crime offenses against any of the several States.

The Commission believes that the question as to whether legislation of this type should be enacted is for the Congress to decide, upon advice from the Government's law enforcement officers. In this connection, the Commission desires to point out that it has consistently taken the position that, if legislation in this area is enacted, neither the Commission nor the communications common carriers should be put in the position where they would be required to perform law enforcement functions.

In the past, the Commission has expressed opposition to certain of the provisions of some of the bills introduced to curb the use of interstate and foreign communications facilities for the purpose of transmitting gambling information. Its opposition was based mainly on the unnecessary administrative problems involving local law and law enforcement, on which neither the Commission nor the common carriers are expert, and on the presence of provisions prohibiting the transmission of illegal information via broadcast facilities, which the Commission felt were not necessary in view of its power to prevent broadcast stations from using their facilities in an improper manner to aid those engaged in illegal activities.

Should the Congress, as a matter of legislative policy, decide that legislation in this area is necessary, the Commission would favor the enactment of H.R. 7309—and where my reference is to 6573—

Mr. FOLEY. We understand that is 7039.

Mr. PAGLIN. This bill, 7039, would make it a crime to lease, furnish, or maintain any wire communications common carrier facility with the intent that it be used for the transmission in interstate or foreign commerce of bets, wagers, or information assisting in the placing of bets or wagers, or any sporting event or contest, or knowingly use such facility for any such transmission. We assume that the requirement of "intent" proposed in new section 1084 of title 18 would not place an affirmative duty on common carriers to investigate the use of their facilities by their lessees.

We believe that this bill substantially meets our objections to legislative proposals on which we previously commented, since it does not inject the Commission into the law enforcement field—

The CHAIRMAN. Why not?

Mr. PAGLIN. Because, Mr. Chairman, this is the point that we mean that it would put common carriers into the field of law enforcement, which we have opposed as a matter of policy consistently.

If I may continue.

Nor does it raise any complex administrative problems with which the Commission would not be expert enough to deal. Moreover, we feel that this bill places the onus of criminal responsibility on the people who actually use or maintain these facilities for the transmission of gambling information.

The CHAIRMAN. At that point, the Attorney General testified yesterday in answer to my question when I asked him concerning H.R.

7039, particularly with reference to the words on lines 5, 6, 7, 8, and 9 on page 1, which, in effect, would embrace TV and radio, he said, as to endorsement, he would leave that or would like to leave it with the Federal Communications Commission. Are you aware of what he said in that regard?

Mr. PAGLIN. I have been advised of it, Mr. Chairman.

The CHAIRMAN. What is your comment?

Mr. PAGLIN. My comment, Mr. Chairman, is that the Commission feels that it does have adequate authority in the Communications Act.

The CHAIRMAN. What authority have you got, other than to refuse a permit or renewal or refuse to grant a permit or refuse to renew a permit?

Mr. PAGLIN. Well—

The CHAIRMAN. Or revoke a permit?

Mr. PAGLIN. If the chairman pleases, the granting of a permit would not probably arise. I doubt, as a practical matter, that anybody would submit an application showing all afternoon horse race broadcast, for example, but the problem does arise with respect to the renewal of licenses of existing stations.

The CHAIRMAN. That may involve a duration of 3 years.

Mr. PAGLIN. I understand that was the chairman's comment yesterday but if I may attempt to set the record straight, in addition to the renewal provisions, we do have the provisions providing for revocation in our act which is section 312 of the act, and under 312 we have that power that Congress has given us.

The CHAIRMAN. Have you ever availed yourself—that is, has the Federal Communications Commission availed itself of its authority to revoke a permit when it had a suspicion, or knew that an illegal operation was going on over the TV or radio facilities concerning these wagers?

Mr. PAGLIN. My answer to the chairman is yes, we have. If I may give you a bit of background as to how this came about.

Shortly after the late Chairman Coy—Wayne Coy—testified before the Senate committee on Senate Resolution 202, and on Senate 3358—this was in 1950—when there were extensive hearings on these organized crime bills, the Commission then, on its own initiative, and within the powers given to it under the Communications Act, undertook to make an extensive study with respect to the extent to which stations, radio and TV stations, were broadcasting horserace or other gambling information which would be of assistance to illegal operations, and in that connection, the Commission sent out a questionnaire to all of the licensees at that time and they ran into the area of something over 2,300 stations. The subject matter of this questionnaire dealt with such matters—if the chairman is interested I can point out the kind of things the Commission was interested in securing information on, to determine whether or not it was a horserace broadcast or it was just in terms of particular sporting events, or whether the nature of the activity involved by the broadcast station was such that one could reasonably assume it was of assistance to the bookies and other illegal gambling operations.

For example, the questionnaires requested information as to the broadcast periods, the sponsorship. For example, there was a distinction between whether or not a program would be sponsored just

by an ordinary merchant or whether it would be sponsored by what is known as a scratch sheet publication. The frequency with which these broadcasts were given; the rapidity with which certain information was broadcast and the detail of such particular programs and for example, they wanted to know, in this questionnaire—if I am going too far afield, please stop me.

The CHAIRMAN. Go ahead.

Mr. PAGLIN. In the questionnaire they sent out they wanted to know, for example, the time of day when the information was broadcast. This the Commission felt was important because in terms of what is known as flat horseracing, it was essentially an afternoon sport, and the Commission had found it reasonable to assume that it was at that time of day that the activities of illegal bookmakers would be particularly prevalent. So that, where they found they wanted to get at situations which had cropped up in earlier cases—I might mention where a station broadcast race results in the afternoon, only in the afternoon, and possibly devoted a great part of its afternoon to horserace results. This was a factor the Commission was interested in. So they asked for that type of information in order to measure the possible assistance to illegal gambling in the field of broadcasting. Then, as I mentioned, they wanted to know also the identity of the sponsor and the source of the information broadcast.

Mr. FOLEY. On that point, did it show that any were the sponsors of the so-called race sheets?

Mr. PAGLIN. Yes. Yes. The answer to the questionnaire showed that they were, in many instances.

The information came also from the, say, Armstrong publications, as against AP, UP or something like that. Here again, as I said, the Commission wanted to know whether or not the type of information that was being broadcast emanated from the so-called scratch sheet publications.

Again, in some earlier cases particularly the *Capital Broadcasting Co.* case, and the *Port Frere Broadcasting Co.* case in Wilmington, the Commission found in those cases that the publishers of such scratch sheets, who were particularly related to the practice of wagering on races, they sponsored racetrack news and also supplied the necessary teletype news ticker with the information which would give the public certain details, or the bookie certain details, with respect to the racetrack.

Also, another element was they wanted to know the facility, and the urgency with which the horserace broadcasting information was handled.

Here again, this would be—if I may use the expression—a tipoff. The speed in giving horserace results was an obvious aid to illegal gambling because the bookies, as we had found out in our investigation, if they could get the information with respect to certain track details or the results of races quickly enough, the frequency with which other wagers could be made—I think they refer to it as the “play”—would permit them to do two things. It would permit them to “hedge off” for example, their bets, if there was a heavy betting on a particular race.

Mr. FOLEY. Lay off.

Mr. PAGLIN. Lay off. Excuse me. Lay off the bets, which is a form of hedging, and also we found that where this information was

handled very rapidly by the stations, they would get again what was called a greater play. The winner of a race No. 2, if he won—

Mr. FOLEY. Parlay.

Mr. PAGLIN. Would be more likely to put his money in horserace No. 3.

Again, another important item which the Commission sought in its questionnaire was the detail of the data being broadcast.

For example, if the station gave information such as the weather and other conditions, name and weight of the jockeys, the scratches—which is the withdrawal of a horse which is previously entered in the race, or the positions of the horses entered, and information of that type, it was felt that this might be of peculiar interest to those who were engaged in off-track betting.

So the Commission again wanted to know what type of information are these stations broadcasting. Further, they wanted—it was indicated that broadcasts which supplied current information as to off times of races, for example, and the predicted post times for succeeding races, had been found to be helpful to operators of bookmaking establishments.

The CHAIRMAN. What was the result of this investigation? What did you do?

Mr. PAGLIN. Right. Right.

The CHAIRMAN. Did you revoke any licenses?

Mr. PAGLIN. I can indicate—we surveyed some 2,339 stations and out of those, somewhat over 2,000 stations, there were only 32 stations which, by virtue of their answers, qualified for further inquiry by the Commission because of their continuous all-afternoon horserace broadcasts. So we went further, into further investigations with respect to those 32 stations. As a result of those 32 further inquiries, the Commission set down for hearing the applications for renewal of licenses or for initial licenses, where they were coming up and had already built the station, in 15 of those 32 cases, because the Commission felt their responses to the questionnaire raised a prima facie doubt as to whether, in light of their broadcasts of all afternoon horserace programs, they were operating in the public interest, and I have the names of the stations.

The CHAIRMAN. Never mind the names. Were there any permits revoked.

Mr. PAGLIN. Yes. Now, what happened was, after we designated those 15, all but 1 of them at that time—and this was around 1952, I guess—all but 1 of them voluntarily discontinued the regular broadcast of racing information.

The CHAIRMAN. They discontinued that type of programing?

Mr. PAGLIN. Right. They discontinued.

The CHAIRMAN. You did not invoke any penalties against them?

Mr. PAGLIN. I beg your pardon?

The CHAIRMAN. Did you invoke any sanctions against them?

Mr. PAGLIN. It was not necessary because they discontinued the programing, which we felt before quasi-judicial determination, was not in the public interest. In other words, they stopped what we felt was—

The CHAIRMAN. In other words, you just tapped them on the wrist and said, "Go, and sin no more"?

Mr. PAOLIN. As to all but the one. In the one case, and this was station WWBZ in Vineland, and in the other case which was WTUX in Wilmington, the Commission held hearings, and in the Vineland case decided that they would not renew the license. There was a petition for reconsideration and again the Commission said "No, we will not renew the license."

The CHAIRMAN. In one case you refused to renew a license?

Mr. PAGLIN. The one case of the station, which refused to discontinue this type of program. Then what happened, as I recall it, was that the manager, who was involved in this thing was dismissed and the station made new representations to the Commission with respect to a completely new operation; then they represented, also, that they would no longer handle this and so, ultimately, the Commission did permit them to continue operating.

The CHAIRMAN. I don't want to be critical of the Federal Communications Commission but it strikes me that although the conduct of those stations in broadcasting all day long, matters appertaining to racing, may have constituted an illegal act—not a violation of any law—I think the Commission itself probably came to the conclusion that the station was not being operated in the public interest, to use the language of the statute, and would not have been justification for refusal to renew the license on the score that they did not operate in the public interest.

Mr. PAGLIN. It would have been possible.

The CHAIRMAN. That was not stated. The Commission possibly felt it was too drastic, is that it?

Mr. PAOLIN. In view of the fact, Mr. Chairman, as you indicated, there was then no law on the books which made the broadcast of such information illegal as such, it was the fact that the Commission felt that that type of operation could be of assistance to illegal activities, and as such—

The CHAIRMAN. What was the date of this investigation that you conducted?

Mr. PAOLIN. The questionnaire was first sent out in January of 1951.

The CHAIRMAN. Has there been any similar investigation since then?

Mr. PAOLIN. Mr. Chairman, it is my belief that there has been no need for any such investigation.

The CHAIRMAN. You had no complaints?

Mr. PAOLIN. We had no complaints, to my knowledge. I could check it further and submit any such information for the record, if you wish.

The CHAIRMAN. You monitor programs, don't you?

Mr. PAGLIN. We do have a field engineering monitoring division, which monitors programs, that monitors the operations of all forms of radio stations to determine whether or not they are complying with the law, the Communications Act and the Commission's rules and regulations.

I might digress for the committee's information for a moment to indicate something by way of footnote, and that is, that the committee may be familiar or may not be familiar with the activities of our field engineering and monitoring division, which have been fairly successful in trapping and in running down and trapping the unlicensed radio operations at the track. You are probably familiar with these

concealed transmitters. There was a recent case in Miami, Fla., where the people in our field engineering and monitoring division were responsible for trapping this man by the name of Jack Johnson—that was the name he gave. Actually, it turned out to be one Neil Garrett.

You see, we have the responsibility of seeing to it that there is no unlicensed operation by radio transmitters.

The CHAIRMAN. Can you supply the committee with any information, if you have any such information, concerning any of these stations that recently had given out this type of information?

Mr. PAGLIN. Are we talking about horserace information?

The CHAIRMAN. Horserace information.

Mr. PAOLIN. If I may, Mr. Chairman, may I limit it further to supplying it as I understand it, supplying the committee with information of stations broadcasting the type of horserace information that I have been describing?

The CHAIRMAN. Yes, sir. That is correct.

Mr. PAGLIN. Well, we will do our best.

I might indicate again, in my opinion, the only way we could find out, to make sure, would be to again send out a questionnaire to all—now some 4,000 or 5,000 stations.

The CHAIRMAN. I don't mean to put that great a burden on you. If you have anything that is available, that might help us.

Mr. PAGLIN. Would the chairman be satisfied thus: Supposing I contact our Broadcast Bureau people, particularly our Complaints and Compliance Division, to see whether or not there have been any complaints. If so, to forward that data to this committee. I take it, the committee does not wish us to go through a complete questionnaire.

The CHAIRMAN. No. If you give us any information concerning complaints.

Mr. PAGLIN. On broadcast operations.

The CHAIRMAN. Suppose you continue with your statement.

Mr. PAOLIN. We also feel that H.R. 7039 would be more likely to assist the various States in the enforcement of their laws pertaining to gambling, because it makes it unlawful to use wire communications common carrier facilities for the transmission of gambling information.

It is suggested, however, that should this bill be adopted, you may wish to consider some language to make clear that it also applies to common carrier facilities utilizing radio solely or in combination with wire for communications.

I might digress for a moment to indicate—well, here, in the next sentence. There are numerous common carrier operations which use combinations of wire and microwave or some of them are solely radio and as the bill is drafted now, we feel that the narrowness of the definition would exclude that, and we don't think the committee would have that intention.

We have, as a matter of fact, suggested language changes appended to this statement which we feel would accomplish this purpose.

Mr. FOLEY. Would your suggestion change or cover the questions raised yesterday about the mobile telephone and the automobile?

Mr. PAOLIN. It would.

Mr. FOLEY. But as it is drawn now, under the proposal, without your language, it would not be covered, would it?

Mr. PAGLIN. It would not as defined. It strictly deals with wire communications. In other words, I guess this has been—not copied, if you will—but taken from earlier bills when the radio operations, though they were to some extent in operation, were not as extensive as they are today.

Mr. FOLEY. You mentioned this recent case where you had the fellow carrying a transmitter around, that is sort of an electronic device.

Under the Attorney General's proposal, since no wire communication is used in that case, that Miami case would not be covered by the Attorney General's proposal, would it?

Mr. PAGLIN. It would not be covered in this bill but as I indicated, the authority of the Commission under the Communications Act is broad enough, both civilly and criminally, to prosecute, as this man was prosecuted, and many others like him, for operating a radio transmitter without a license. The penalties are quite severe. You could get after him or at least, the law enforcement offices could do it under the Federal Communications Commission Act, for operating an unlicensed transmitter.

If it was so intended, he could likewise be subjected to the penalties of an overall antigambling bill. Then an amendment, such as we suggested, we think, would do the trick.

The CHAIRMAN. That would include these arrangements with the taxicabs where the home office talks to the cabdriver as he drives around, in your version?

Mr. PAGLIN. That is right. Those are not common carrier facilities, by the way. Those are in what we call the safety and special services field.

Mr. FOLEY. In that connection, you are familiar with the Marcello case in Jefferson Parish?

Mr. PAGLIN. Yes.

Mr. FOLEY. There is a private system that you people licensed; then they used it, not for the purpose for which they applied, but to disseminate racing information.

Did you revoke that license?

Mr. PAGLIN. No.

Mr. FOLEY. What happened there?

Mr. PAGLIN. What happened? After the proceedings with the law enforcement officials were finished, it turned out in the Commission's judgment—I think in the judgment of the law enforcement people, the Department of Justice, there was not sufficient evidence; that the one—what was the "black sheep" Marcello's name?

Mr. FOLEY. Carlos.

Mr. PAGLIN. Carlos Marcello, that he was not a partner in the licensee, the Commission's licensee. That his brother, who was the Commission licensee, had not misrepresented, and there was, frankly, not enough information upon which the Commission could revoke it.

Mr. FOLEY. Lack of evidence?

Mr. PAGLIN. Lack of evidence; so the Commission did not revoke; as far as we know, the "white" brother Marcello is still operating.

Mr. CRAMER. Can I ask this question? How many similar prosecutions to the Marcello prosecution has the Commission instituted in recent years?

Mr. PAGLIN. Marcello?

Mr. CRAMER. Where gambling information was being transmitted by communication facilities? Do you have any records?

Mr. PAGLIN. You were speaking of the example I gave, of this unlicensed radio operation on the track?

Mr. CRAMER. Either unlicensed radio, or using the facility for illegal purposes; the transmission of gambling information.

Mr. PAGLIN. Excuse me for a moment.

I have some information here from the field engineers, and monitoring bureau—the Commission's field engineering and monitoring bureau, which as I had the chance of reviewing it quite quickly, indicates that there have been a number of cases—quite a number. I would suggest, for the best purpose of the committee, if you would like for me to have our field bureau get some data together, to indicate those cases—my own personal recollection is that there had been a number of cases where the field bureau has tracked these fellows down and has turned them over to the law enforcement officials.

Mr. PEET. Could you additionally furnish information on how many procedures, instituted under the Commission's authority, have been successful in either punishing the offenders who operated an illegal communications system, or in taking away the licenses of individuals who have used their communications facilities illegally?

Mr. PAGLIN. May I break it down?

Mr. PEET. Relating to the transmission of gambling information.

Mr. PAGLIN. May I break it down to make sure we will give the committee what it wants? Insofar as procedures instituted by the Commission in this first case, the guy who wears a transmitter around his waist, underneath his clothes; the fellow who works for the bookie; these, under the law, are referred to the Justice Department for criminal prosecution in terms of the violation of the Communications Act.

We are not a law enforcement agency.

If we find a violation of the act with respect to unlicensed radio operation or illegal interception of communications, this as a matter of law, under our act, is referred to the Justice Department for prosecution.

We of course, work very closely with them. It is not our proceeding.

Mr. PEET. You work closely—you keep records of them, I assume?

Mr. PAGLIN. Yes. Yes. Our people have dug up the information. In those instances, we would be happy to provide you with that.

As to the second half of your question, if I understand you correctly, are you referring to the type of cases, such as I mentioned a little earlier, with respect to broadcast stations, or any other types of illegal operations, radio, but only with respect to the transmission of gambling information?

I daresay, it would be the kind of situation that I indicated in the WWBZ case or the WTUX case in Wilmington. To my knowledge, there was another case in Annapolis, WANN, but anyway, we will supply this information for the record.

Mr. PEET. With the disposition of those cases?

Mr. PAGLIN. Yes, that would be indicated.

Mr. PEET. Thank you.

Mr. PAGLIN. Are you also talking about the Marcello-type thing?

Mr. FOLEY. Yes.

Mr. PEET. Yes.

Mr. PAGLIN. All right. I will have the people in our office look into that. We will supply that for the record, if that is agreeable.

Shall I continue, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. PAGLIN. In this connection, it is noted that many interstate and international circuits are operated through the use of radio frequencies. Suggested language changes in this bill are appended hereto.

With respect to H.R. 3022, the Commission's principal objection is that it would put the communications common carriers in the field of law enforcement. Particularly, that section which would make it a crime for common carriers to fail to inform the Department of Justice of circumstances which would cause them to believe that a person is using their facilities for the purpose of accepting wagers.

The third bill, H.R. 5230, differs from the other two, in two major respects. It is concerned with organized crime generally, and not limited to gambling, and the prohibition is drafted so that it will encompass communications transmitted in interstate commerce by wire or radio. The broad scope of this language, we feel, poses serious problems for this Commission; particularly, the possibility that it may be held to apply to matter transmitted by regularly licensed broadcast stations. Should this be so, we believe that this proposal would impose unnecessary and burdensome limitations upon the licensees of these stations. As indicated above, we are of the opinion that the Commission's present authority is sufficiently broad to prevent the use of broadcast and other radio stations in a manner which would aid illegal activities.

That concludes the statement.

I might indicate, Mr. Chairman, again, Mr. Lambert from the Common Carrier Bureau, and myself, are available to answer any questions, and Mr. Lambert is the expert in terms of the tariffs filed by the telegraph and telephone companies, filed with us, which have the pertinent information as to the use to which that facility is put.

The CHAIRMAN. We thank you very much. Our thanks, also, to your colleagues.

Mr. CRAMER. Excuse me. May I ask a question, if the chairman please?

The CHAIRMAN. Yes.

Mr. CRAMER. I notice no reference is made to H.R. 7039 which was the previous Attorney General's recommendation in this field, and I understand it was the recommendation of the American Bar Association, relative to this same subject matter.

Are you familiar with that proposal?

Mr. PAGLIN. Well, I am, Congressman, as of this morning, and the reason was that this was not referred to us until, I believe, this morning.

Mr. CRAMER. Did you not have it under consideration in the last session—the same proposal that I introduced, and it was recommended by the Attorney General in the last session.

Mr. PAGLIN. I am informed that there was—that we did comment on bills of this nature—but that there are changes in this bill, from those that we earlier commented on.

Mr. CRAMER. Well, the basic concept of those proposals—

Mr. PAGLIN. Yes.

Mr. CRAMER. Permitting the local law enforcement officials to request that communication facilities not be used, do you object to that approach?

Mr. PAGLIN. No. No. We do not, and this is basically—this is basically—the approach which, as I indicated, was taken in earlier bills, and the Commission, if I am correct, has not objected to that approach, if I understand you correctly, that local law enforcement officials would come to the carriers, and advise them that their facilities were being used in an illegal manner, and then—and this I would like to pass to Mr. Lambert—but by way of preface, say that the tariffs, as I understand them, and I would like him to comment more in detail, provide that in those circumstances, the common carrier can discontinue the facilities.

Mr. Lambert, would you respond?

Mr. CRAMER. This would give them the authority, though, to do that in the instances where the local officials requested it, which they don't have the authority to do now, right?

Mr. LAMBERT. The legislation which you refer to, would give the carriers the right to discontinue the service if the local law enforcement officer said it was being used for an unlawful purpose and would further provide the carriers would not be liable for having discontinued such service. At the present moment, the tariffs of the telephone and telegraph companies provide that their facilities shall not be used for an unlawful purpose.

Mr. CRAMER. But, as a practical matter, they cannot do it now because of the legal consequences that might result?

Mr. LAMBERT. There is that area of risk.

Mr. CRAMER. This takes care of that risk?

Mr. LAMBERT. We have different rules of the courts on the probable cause.

Mr. CRAMER. In other words, you would have no objection to making it illegal to use it and also, adding the permission of the carrier when it is so used, to withdraw it.

Mr. PAGLIN. Without liability.

Mr. CRAMER. Without liability.

Mr. Chairman, that is the aspect that I think is important; that the Commission does not object to giving the communication facility the authority to withdraw the services if this is being violated. Local or Federal authorities ask that they be withdrawn, as contained in H.R. 7039, and as recommended by the Attorney General. That is the arm of enforcement that I suggested earlier. I think it is essential if anything is going to be done in this field, effectively.

How about the further provision that has been recommended by the previous Attorney General relating to private line communications, which is a registration section?

The CHAIRMAN. I think we are poaching on the grounds of the jurisdiction of another committee, and I think we would be offending them as we did, I remember, in the case of the Civil Rights Act, where we tried to accomplish more than the authority vested in us by the Reorganization Act, when we attempted to cover matters that were within the province of other committees, and you may not have felt the same, but I did, as chairman, and I was called to task by the chairman of the committee. I don't want to go through that experience again, if you don't mind.

Mr. CRAMER. I appreciate the chairman's observations. The chairman did it before because of the importance of the subject matter. I appreciate the chairman's position on it. I am equally interested in this subject matter, and am prepared to run the risk; but I would like to comment, though, on that direct private line communication registration proposal.

Mr. PAGLIN. I don't mean to evade you. I want to say this. In the regular course of procedure, the committees to which these bills are referred send them down to the agencies, including the Commission, for comment. As I indicated, we just got this yesterday, and we would, in due course, submit the Commission's comments to the committee.

Therefore, if you will permit me, may I say that the Commission's official comments with respect to H.R. 7039 would probably be submitted. I see it has been referred to the Committee on Interstate and Foreign Commerce, so the Commission's position will be stated in those comments.

Mr. CRAMER. You did have this matter under consideration at the last session?

Mr. PAGLIN. Similar matter; that is right.

Mr. CRAMER. You did comment on H.R. 3022?

Mr. PAGLIN. At the present time; yes.

Mr. CRAMER. Yes. That is right.

Mr. PAGLIN. That is right.

Mr. CRAMER. Which was my proposal, and your objection was?

Mr. PAGLIN. I beg your pardon?

Mr. CRAMER. Which was my proposal.

Mr. PAGLIN. Oh, your proposal.

Mr. CRAMER. The objection was that it would put the communication's common carriers in the field of law enforcement.

Mr. PAGLIN. Yes.

Mr. CRAMER. I assume you don't object to the affidavit section being filed with the Attorney General?

Mr. PAGLIN. Well, we do object in terms of the Commission's having the duty to do this.

Mr. CRAMER. This does not provide that the Commission has that duty. The affidavit is filed with the Attorney General at the time the gambling tax is paid or a stamp is requested. You are not involved in that at all.

Mr. PAGLIN. No. We do not have objection to that at all.

Mr. CRAMER. All right. You don't object to that. Therefore, you would not object to this approach, coupled with making it illegal, that the chairman's bill provides.

Mr. PAGLIN. Again, with all due respect, Congressman, I do not think it is proper for me to attempt to bind the Commission in terms of a comment on the bill which has not yet been presented to it.

Mr. CRAMER. This bill is before you—H.R. 3022. You were asked to comment on it.

Mr. PAGLIN. I thought you were talking about H.R. 7039.

Mr. CRAMER. It provides for filing an affidavit with the Attorney General at the same time they file a request for a gambling tax stamp. You don't object to that. You don't object to the chairman's approach in making it illegal. I don't either. I think it should be some combination of the two, which ever might do the job better.

You, representing your agency, would have no objection to either one, separately.

Mr. PAGLIN. If I understand you correctly, putting all of the pieces together, I believe that is the position.

Mr. CRAMER. All right.

Now, what you do object to in H.R. 3022, is bringing the common carrier in under requirement contained on page 4, line 8.

Mr. PAGLIN. That is correct.

Mr. CRAMER. Providing communication services without an affidavit. Whoever, being the common carrier, provides communications to any person, whom it has reason to believe is a person required to file these requests for gambling tax stamp.

Mr. PAGLIN. That is correct.

Mr. CRAMER. Suppose we strike out the common carrier provision and only include the employee so that you have left: "whoever being an employee of the common carrier, by wire or radio, assists in providing any communication service, or assists in the installation of equipment for a person whom it may have reason to believe would have to file this affidavit."

Mr. PAGLIN. Well—

Mr. CRAMER. That leaves the regulatory agency itself out of the picture.

Mr. PAGLIN. Except if it merely transposes the duty from the company as such, to its agent or employee in terms of the basic problem which would be to make him an investigator or law enforcement officer, it would be my present opinion that you have not resolved them.

Mr. CRAMER. How do we get at a fellow who gets a check from the gamblers, who works for the telephone company and puts his telephone in for him?

Mr. PAGLIN. I dare say that the law enforcement Government officials might be in a better position. I don't think I am qualified to give my opinion on it.

Mr. CRAMER. That is the place we must get at. The ranking member asked me to ask this question of you, which relates to this subject as well.

On page 1, you say your opposition is based mainly on the unnecessary administrative problems involved in local law enforcement in which neither the Commission nor the common carriers are expert.

Of course, that is a matter of policy for this committee to decide, is it not; that if the committee feels that the end to be served, fighting organized crime, would justify an additional responsibility on the part of the carrier or your agency, then that is a matter of policy. Is that right?

Mr. PAGLIN. Yes, sir. This is a matter of legislative policy.

Mr. Chairman, might I for the purpose of the record in this proceeding, suggest that reference be made for your staff to the hearings held before the subcommittee of the Interstate and Foreign Commerce Committee of the Senate in the 81st Congress, on S. 3358, in April and May of 1950?

The CHAIRMAN. That reference will be noted.

Mr. PAGLIN. And particularly I refer to the fact that at page, starting at page 888, Appendix C, is the staff report which was made back in 1943—in the early 1940's—which not only gives considerably de-

tailed information with respect to the extent of communication facilities being used—

The CHAIRMAN. The record will speak for itself.

Mr. PAGLIN. It will. I am sorry.

The CHAIRMAN. Thank you very much.

That will conclude the testimony this morning. We will reassemble this afternoon at 2:30 and Mr. Steinberg, the president of the National Association of Defense Lawyers, will be directed to appear by the New York State Bar Association.

We will adjourn until 2:30.

(Thereupon, the committee recessed until 2:30 p.m.)

#### AFTERNOON SESSION

(The committee resumed at 2:30 p.m., pursuant to the noon recess.)

The CHAIRMAN. The committee will come to order.

I notice the presence of our very distinguished colleague, Representative John Lindsay of New York. I understand he wishes to have the proud distinction of introducing our witness for this afternoon, Mr. Harris B. Steinberg. Mr. Lindsay.

Mr. LINDSAY. Mr. Chairman, members of the committee, it is a very great honor for me to present to the committee Mr. Harris B. Steinberg, my constituent and one of the most distinguished lawyers in the country; an expert in the field of criminal law; a member of several bar associations; with a long history of contribution to legal thinking on the whole subject of the criminal laws of the country, their application, and the judicial processes as they are affected thereby.

So I am very pleased that you, Mr. Chairman, have given Mr. Steinberg an opportunity to be heard in this fashion.

Mr. STEINBERG. Thank you very much.

The CHAIRMAN. Mr. Steinberg, with that very, very splendid introduction, we are going to expect a great many things from you. I feel that you will live up to those very high-sounding phrases that our good friend, John Lindsay, has spoken about you.

Mr. STEINBERG. Thank you again, Mr. Chairman.

The CHAIRMAN. Go ahead, Mr. Steinberg.

#### STATEMENT OF HARRIS B. STEINBERG, ATTORNEY, NEW YORK CITY

Mr. STEINBERG. I am very pleased to be here, Mr. Chairman and members of the committee. I received two invitations, as a matter of fact: One which was addressed to me as president of the National Association of Defense Lawyers in Criminal Cases, which is an organization of criminal defense lawyers throughout the United States; and one in my capacity as chairman of the Criminal Courts Committee of the New York State Bar Association.

Unfortunately, the press of time since receiving these invitations has made it impossible to circularize the membership of those two associations, one being national and one being statewide. So I can't presume to tell you today what the opinions of the members of these organizations are; and I can't presume to tell you that this is some-

thing which we have all agreed upon because there just hasn't been time.

I would be happy to tell you my own reactions. If that would be of use to the committee, I am here to answer any questions and tell you how I feel about them.

The CHAIRMAN. We would like to have your own personal reactions as well, sir.

Mr. STEINBERG. Yes, sir. As I look at these bills, Mr. Chairman—they are a package, so-called, of antiracketeering bills—I am struck with the feeling that they were hastily drawn to some extent and that they have not thought through the problems that are inherent in this type of bill.

To set one of them apart from the others, and that is the one involving granting of immunity to witnesses, I think that has merit, because I think that any factfinding body like a grand jury which has the power to confer immunity and thus to compel testimony over any claim of privilege against self-incrimination—I think we have come a long way to the point where that is recognized as a necessary adjunct of the investigative power.

The CHAIRMAN. Do you mind if we ask questions as you go along?

Mr. STEINBERG. I wish you would.

The CHAIRMAN. I agree with you wholeheartedly in that connection. May I ask this: Do you think that the granting of immunity by the Federal Government as a condition before testifying would carry with it State immunity?

Mr. STEINBERG. It could carry it if you decided to grant it. The Federal Government can only move into an area where you have Federal jurisdiction. And once there is Federal jurisdiction, you preempt the field and oust the States from it. Or you can do it concurrently, of course, as you well know.

Once you do move in, you may, if you desire, give complete immunity. In other words, immunity not only in the Federal jurisdiction but in the State jurisdiction.

I think that is the very least in fairness that you should do. Otherwise you would be perpetuating the unfairness inherent in Knapp against Schweitzer.

The CHAIRMAN. Can we pass a statute which says if the Federal Government grants immunity that shall be deemed immunity in a State?

Mr. STEINBERG. All crimes—State and Federal—yes.

The CHAIRMAN. Would that be binding on the States?

Mr. STEINBERG. It would be binding on the States, and it should be. There have been many instances—in fact there is one involving the congressional power to investigate—which have been construed as binding on the States as well.

Mr. FOLEY. That is the *Alden* case, which sustained its constitutionality; and then subsequently you have the *Brown* case.

Mr. STEINBERG. That's right.

Mr. FOLEY. That almost touches this very point.

Mr. STEINBERG. Exactly. The question is one of congressional intent. You may do that. You need not do it. However, it seems to me that, in fairness and in decency, if you do decide to compel testimony, you should grant immunity not only in the Federal jurisdiction but in State jurisdictions as well. Otherwise you would be in effect

playing a game, calling a man, making him undress in public, so to speak, and saying: "We are not going to bother you here, but across the street you are fair game for the State prosecutor."

That is the effect at present of the State grant of immunity. If a New York County grand jury calls a man, compels him to testify under threat of imprisonment, and he does testify, the Federal prosecutor across the street in Foley Square can then indict the man and put him in jail for his own compelled testimony.

That is very unfair, it seems to me.

The CHAIRMAN. In other words, if the State grants immunity, that doesn't grant immunity from Federal prosecution?

Mr. STEINBERG. They can't do it. They have no power to do that. They can't bind the Federal jurisdiction. They can only give all the immunity which is in their power, which is from their own action.

Therefore they can expose a man to prosecution in other States as well as in the Federal jurisdiction. There is at least a geographical separation from other States. A man needn't go to Oklahoma if he is a New York resident. But he can't stay out of the Federal jurisdiction because it is an idea; it is not a place.

Mr. ROGERS. Mr. Chairman, let's assume a man goes in to rob the U.S. mails. By the robbery, he commits an offense against the Federal Government as well as the State—the Federal Government by virtue of the fact that it is Federal property. They have jurisdiction over the transportation of the mail. The State, by virtue of the robbery, and so forth.

Out of the robbery of the mail, let's assume that the man has committed murder, which probably would not be a crime in this particular instance against the Federal Government save and except that of robbery of the mail.

Do you think that we could write a piece of legislation which would say that the Federal Government can attempt to solve crime of robbery of the mail and grant immunity to a man who may be a participant in it so that the State could not prosecute him for murder?

Mr. STEINBERG. You not only could, but you should. It may sound anomalous because you have posed a question which in your statement would say a man who is a murderer is going to go free of the murder. Actually what you are talking about is not really immunity from prosecution; you are talking about immunity which is given when you compel the man to testify himself.

If a man commits a crime, whether it be murder, bank robbery, or any kind of a crime, there is nothing to stop all the combined forces of good government—State police, city police, the FBI—from massing all their resources, getting the witnesses, convicting the man under proper procedures.

We are talking now about something very special. We are talking not only of compelling the man to testify himself—which is only one way of getting testimony—

Mr. ROGERS. Here this is a bank robbery. The only reason the Federal Government gets in on the bank robbery is because of what we call FDIC insurance.

Mr. STEINBERG. May I say this, Mr. Rogers. In an ordinary bank robbery, a man goes in, let's presume, with a gun in his hands. He says to the teller: "Give me your money." The teller will be able to recognize that man and testify against him. Or they may catch

him in the act. Or his accomplices may testify or the bank will have 15 witnesses who see him. There is nothing to stop all the governments from going after this man, convicting him, and giving him his just punishment.

We are talking about calling the robber before the grand jury; that is all we are talking about.

Mr. ROGERS. I can cite instances—and you know of many cases—where there is a question of identity. The only way you are going to get the facts necessary to bring about a conviction is to get somebody to turn evidence or be a stool or what not.

Suppose we have five men participating in the robbery, and the government isn't sure—that is, the Federal Government and the State and the police and so forth are not sure—who committed it; but they suspect and they get one man. They sweat him down and then finally they take him before the Federal grand jury because the bank was insured under the FDIC and it is a crime because he has made away with assets of an insured bank.

Should we pass legislation that says if the proper immunity protection is given to him that we should extend it and require the State not to prosecute him? Would that be binding on the State?

Mr. STEINBERG. Yes, I think it would, Mr. Rogers. I think it should, because I don't think we should set the Constitution at naught. The fifth amendment to the Constitution, and the cognate provisions of the State constitutions, were put there for a purpose; and that is to prevent this from becoming a police state; to prevent people from being pushed around and try to get incriminating words out of their own mouths.

That doesn't mean you are going to stop prosecution. That doesn't mean you are not going to have vigorous law enforcement. But it means you are not going to push people around to try to force them to incriminate themselves out of their own mouths.

Mr. ROGERS. It isn't a question, as I see it, of pushing people around. It is just a question of can the Federal Government give a man immunity against a crime that may be—

Mr. STEINBERG. The short answer to that is they can; they have done it in the past. It is a question of congressional intent, and I don't think you should ever pass a congressional immunity statute unless you do. It is just not fair and it is just not right. That is my opinion on it.

Mr. PEET. May I ask a question?

The CHAIRMAN. Mr. Peet.

Mr. PEET. Mr. Steinberg, are you familiar with the provisions of H.R. 3021, by Mr. Cramer, which deal with this question of immunity from prosecution?

Mr. STEINBERG. I have looked at the bills. The number at the moment eludes me, but let me check on it. I have it right here. Which is it?

Mr. PEET. H.R. 3021. That provision is embodied in Mr. Cramer's omnibus bill, 6909.

Mr. STEINBERG. Yes; I have 3021 here. As I read that, on page 2, lines 13, 14, 17, and 18:

nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court—

I think as a lawyer if I came up with this case I would say that this does give immunity in State courts. But, on the other hand, it is not clear enough.

If you gentlemen are drafting something, it seems to me you can use the ordinary language of immunity statutes, if you intend to give it, which is, "nor shall he be prosecuted in any court, Federal or State, for any crime which is revealed by his testimony." That is language which has been used in the New York statutes and many others.

This, I think has a—it is a patent ambiguity. The question is: What is your intent? Why leave your intent open to question?

Mr. FOLEY. Mr. Steinberg, I think I can clarify that by saying this to you. You look at the immunity statute we now have in title 18 of the United States Code today relating to national security cases, which was sustained as constitutional in the *Alden* case. The case you have in mind about the use of testimony is *Adams v. Merrill*. That is the use; it is not an immunity. It is just the use.

Mr. STEINBERG. That is just the violation of privilege.

Mr. FOLEY. Subsequent to the *Alden* decision, you have the *Brown* decision. The Court hasn't ruled specifically, but it has said that, where the grant of immunity involves the same facts which constitute both a State and Federal violation, the grant of immunity applies.

If you will read the report of this committee in the 1954 Immunity Act, it said that, since the Congress does not know whether it has the power under the Supreme Court decision to grant immunity against State prosecution, that in order to equate the constitutional privilege against self-incrimination, if that is necessary, then Congress needs to grant immunity not only Federal but statewide also.

The reason why that language is used is because since that time the Court has indicated that the grant in a Federal case that involves a State violation applies both ways. So it is not a legislative oversight. It was done deliberately.

Mr. STEINBERG. I am glad to know that.

The CHAIRMAN. The language in H.R. 3021, page 2, line 19, the words "in any court"—you say that covers the use of testimony? That covers every conceivable court?

Mr. STEINBERG. I would think so. I would certainly argue that in behalf of any defendant I represented. It seems to me, since you start off with the power of having invaded the field and preempted it, that you would probably get that kind of construction.

But it seems to me that, if you mean to do that, why not say it a little more clearly if you possibly can and just save some defendant from having to pay lawyers' fees and records on appeals and go all the way up to the U.S. Supreme Court, when you can write it in such fashion that a nisi prius court can understand it readily?

The CHAIRMAN. Wouldn't it be better on that, then, to just amend the Immunity Act?

Mr. STEINBERG. You could do that.

The CHAIRMAN. That would be a better way of doing it.

Mr. STEINBERG. You could do that, too.

The CHAIRMAN. Then it would remove all doubts.

Mr. STEINBERG. Yes.

Mr. FOLEY. You have the constitutionality sustained there. This would probably be tested.

Mr. STEINBERG. That's right.

Mr. FOLEY. If you put it into the Immunity Act as a result of the *Alden* decision, you know that is constitutional. Then you have the *Brown* decision delineating the area, and you have case law.

Mr. STEINBERG. You see this problem of the grant of immunity is one which you don't lightly give to irresponsible people. What I mean is, there are many bodies who are empowered to ask questions and to compel testimony, and many of them do not have immunity powers. So they get to a certain point in their inquiry. Someone raises his privilege against self-incrimination, and the questioning then is stopped.

When you give somebody the power to confer immunity at that point, it must be such a responsible person or body, one so imbued with the public welfare, one above and beyond any partisan considerations, that everyone feels happy that these people are going to make the decision.

There have been many bodies that I know of who don't have it. They have asked for it from time to time, and I think it has been in the public interest that they shouldn't have it.

I think a Federal grand jury is a responsible body. I think a Federal grand jury under the aegis of the U.S. attorney, selected by the President, the Attorney General, passed upon by local bar associations or what have you, is generally a person who can be counted on to do justice and be fair.

If you have a law which gives him the power to grant immunity, I don't see why you should be in a different position than a State district attorney. I think, even as a defense lawyer, I recognize the justice of such a tool in the hands of a prosecutor.

Mr. PEET. Subject to clearing up the ambiguities which relate to whether or not this provision would be applicable in Federal or State courts, do you have any other objections to the approach of H.R. 3021?

Mr. STEINBERG. You mean with regard to the grant of immunity?

Mr. PEET. Right.

Mr. STEINBERG. I would say this. In the State court that I am most familiar with—because I have practiced there in New York—we have had various problems regarding the grant of immunity such as: Is it automatically conferred, or need it be claimed? Is it automatic or need it be claimed?

Certainly in the case of a prospective defendant or a person whom the prosecutor knows to be in the shoes of a prospective defendant, we shouldn't play games with him. We shouldn't put him in the position where he has to know at his peril whether to ask for the immunity or not—not to make a game of bravado or public relations but of it.

In other words, Mr. A is being investigated. He goes before the grand jury, but it doesn't suit his purpose to ask for immunity because in the public mind that has come to be equivalent to confession of guilt. So he tries to bull his way through and he doesn't claim it.

I think you should get away from all that. You should say that when a man is called before the jury he gets immunity. If you want to say he must claim it, that should be clearly applicable to witnesses, not prospective defendants, because presently under the laws as they are a district attorney can call before a Federal grand

jury a man whom he knows to be a prospective defendant and in effect play a game with him.

If the man doesn't claim his privilege and answer the questions, it is used against him. If he does, he walks out.

Mr. PEET. May I read this language to you, Mr. Steinberg, from page 2, line 4:

When it is determined that the grant of immunity is necessary in the public interest he, upon the approval of the attorney general, shall make application to the court that the witness shall be instructed to testify.

Mr. STEINBERG. This is in regard to the grant. You are speaking of the grant of immunity. In other words, not an improvident grant. That is not what bothers me.

What bothers me is calling a man before the jury and playing a game like Russian roulette to see whether he is going to claim his privilege or not; to see whether he is stupid enough to waive his privilege by not claiming it.

I think a man shouldn't be called unless you are prepared to give him immunity or unless you warn him and say, "Now, look, we don't know where you stand. You may be a defendant. You may not be a defendant. If you are going to claim your privilege, I don't want you. We are not prepared to give you immunity."

But it ought to be right out on the table. A man ought to know where he stands. He shouldn't be tricked into giving away his constitutional rights.

The CHAIRMAN. There is another factor here. If we—as you indicate your preference—amend the immunity statute instead of adding a new provision, then we would be granting congressional committees the right to grant immunity because the immunity statute includes that grant to congressional committees as well as to grand juries.

Mr. STEINBERG. That's right. It would be like the New York statute which has an omnibus immunity statute for any competent authority. Then they later define competent authorities as State legislative committees, grand juries, commissioner of investigations, and so forth.

The CHAIRMAN. You think then that a congressional committee should have that broadened authority?

Mr. STEINBERG. I would answer very respectfully, I am not quibbling with you, that you have infinitely more experience with congressional committees than I have. I say they have performed wonderful work in the public interest. I think at times people have felt perhaps they were partisan.

I think a congressional committee, like all human beings, which is composed of human beings has its ups and its downs. It seems to me when you have a congressional committee that enjoys the full confidence of the legislature, this great honorable body here and the public, that you couldn't have a better body to grant immunity.

It seems to me that your own rules of self-restraint—you will very often let a committee go much further than you yourselves would like to go. In those cases I don't think as a member of the public I would like to see such a body have it. But you can't make rules for people; you have got to make rules that apply to everyone.

It seems to me that, on balance, with what the public knows about congressional committees and how they have worked, I think we trust congressional committees to have that power; and I think they would

exercise it wisely in most instances, which is about all you can predict for any group of human beings.

The CHAIRMAN. Suppose you go to the next bill.

Mr. STEINBERG. The other bills, it seems to me, bother me because they extend the principle of Federal jurisdiction—

The CHAIRMAN. What bill are you referring to now?

Mr. STEINBERG. The ones which the chairman sent me, 3022, 3023, 6572—

The CHAIRMAN. Take one at a time.

Mr. STEINBERG. I will say this. I have not had a chance to sit down and write the kind of memorandum which I would like to do as a lawyer.

The CHAIRMAN. Let us ask you some questions then.

Mr. STEINBERG. Yes.

The CHAIRMAN. Let's take H.R. 6572. That is travel in aid of racketeering enterprise.

Mr. STEINBERG. I don't think that was sent to me, Mr. Celler—yes, it was; I am sorry. That is the one which prohibits travel in aid of racketeering enterprises.

It seems to me this one comes dangerously close to thought control. This one penalizes and makes criminal a man's intent, which is something that is in his mind. It has never been the policy of our law to make criminal what is in a man's mind unless he externalizes it with some act, which is immediately dangerous to the public welfare.

If a man wants to murder someone in his mind, he is a nut; but he is not a dangerous nut until he takes a gun and goes looking for the man.

If a man wants to do something else or has some foul plan in mind—we all have. Psychiatrists tell us that one of the ways to function is to not worry too much about what is in your mind as long as you can control your behavior.

The CHAIRMAN. In other words, we have the bill that whoever travels with intent—that is mental—to do certain things, all he does is to travel and he has that intent and then he violates the law.

Mr. STEINBERG. That to me is a terrible thing, Mr. Chairman. That is what this law says.

The CHAIRMAN. That is all it says.

Mr. STEINBERG. Yes.

The CHAIRMAN. He doesn't actually have to distribute the proceeds of the enterprise; he doesn't have to commit any crime of violence.

Mr. STEINBERG. That's right.

The CHAIRMAN. He doesn't have to promote, manage, establish any unlawful activity. All he has to do is have the intent to do that.

Mr. STEINBERG. That's right.

The CHAIRMAN. Even if he doesn't do it, he changes his mind after he gets to the place of destination, will he have committed the crime?

Mr. STEINBERG. Under this bill he would have committed the crime. The terrible thing about that is how do you judge a man's intent? It is by his actions. Something he does a year later or something somebody says about him later will be used to fasten criminal guilt on him for what was in his mind at a prior time.

The CHAIRMAN. Suppose I say, "I am going into the State of Virginia tonight from the District of Columbia and I am going to distribute the proceeds of some bootlegging activity which I am interested in," and then I don't do it at all.

Would I be guilty of this crime if I just do that? I state that is my intent.

Mr. STEINBERG. Under this bill you would be. Under this bill you would be. There is a locus poenitentiae. You know the Supreme Court said in *Krulowitz*, I think it was, that the flexibility endangered the conspiracy doctrine as such to be firmly in the mind of the legislatures and the courts because to extend conspiracy is a dangerous thing because you are punishing thought.

This country is locked in a world struggle with Russia. What are we fighting about? We are fighting about the fact that we have freedom—

The CHAIRMAN. We have got enough troubles—

Mr. STEINBERG. That is inherent. We are fighting about the right to think and to speak and to be different from them. Even if you think illegal thoughts, we are not going to put you in jail unless you externalize them and become dangerous.

The CHAIRMAN. In addition thereto, you have the word on page 2: "Otherwise" on line 3. Isn't that rather vague?

Mr. STEINBERG. I don't see how you could get much vaguer than that, Mr. Chairman.

The CHAIRMAN. Would that mean lack of due process if we prosecuted as a result of the word "otherwise"?

Mr. STEINBERG. I think so. Certainly that doesn't provide the kind of standard of criminality so that an innocent man can regulate his conduct, which the due process provisions of the Federal and State constitutions require as a test of a criminal statute.

The CHAIRMAN. Would you say that the whole subsection (3):

Otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity—

lock, stock, and barrel is utterly imprecise and ambiguous so as to involve a lack of due process if there is a prosecution?

Mr. STEINBERG. I think that is a fair way to characterize it, Mr. Chairman.

The CHAIRMAN. On page 2, subsection (b):

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States—

I live in the District of Columbia. I have a liquor store in Baltimore. The Maryland laws require that I close that store at 12 midnight.

I leave my house in the morning and I have the intent of keeping that store open until 1 a.m. instead of closing at 12 o'clock. I am violating the law of Maryland.

If my journey into Maryland is coupled with keeping the store open 1 hour after hours, am I guilty of violation of this statute subjecting myself to very dire penalties?

Mr. STEINBERG. Yes, you are. Unlawful activity as used here doesn't necessarily mean criminal activities. As the chairman just

pointed out, "unlawful" might be in violation of some regulatory statute like the State liquor laws or the State bingo laws or any—

The CHAIRMAN. It could be a misdemeanor, couldn't it?

Mr. STEINBERG. It could be a penalty provision. It could be a provision like losing your license for 30 days because you serve a child under 18 with a highball. It needn't even be criminal.

Mr. FOLEY. A pharmacist selling barbiturates that he shouldn't.

Mr. STEINBERG. It could be a priest who is running a licensed bingo game and because they didn't actually correctly report the night's take and he is going across the river to Hoboken where he lives to deposit the proceeds in the bank, he could be guilty of a Federal felony with 5 years in prison.

What does that mean? Basically what it means is that when you make a wide casting net, a loose statute like this, you say, "Well, of course, we are not going to prosecute a man who is a good businessman. We are not going to prosecute a priest."

But then you are becoming a man who decides whom you are going to prosecute, for whatever reason suits you. Maybe you don't like his color. Maybe you don't like his religion. Maybe you don't like his political party. Maybe you don't like something you read about him in the papers.

This becomes a government of men and not of laws. A criminal statute should be one that applies right down the line to everyone and not leave it to a district attorney's discretion as to whom you would like to prosecute and whom you would not like to prosecute.

The CHAIRMAN. Let me ask you: As a good lawyer, realizing the need for prohibiting travel in aid of racketeering enterprises, how would you fashion a statute to achieve that end?

Mr. STEINBERG. I don't honestly believe, Mr. Chairman, that travel is such a great important aspect of criminal enterprises. I have been in the criminal law field for 25 years. I have been a prosecutor. I have been a defense lawyer. It seems to me that when you look at the statistics of the Federal prosecutors and the State prosecutors—98.9 percent convictions, 99.2 convictions—most cases properly result in convictions where they should. Many cases where there should be convictions, there aren't because they don't get the evidence.

Creating laws doesn't help you put people in jail. It is getting effective, honest, forthright law enforcement. Here is what I think, Mr. Celler. What they are trying to do here—it seems what they are groping to do here—is to get the FBI, which is a fine honorable body of able men, who are not corrupt, who are above any partisan suspicion, who have made a fine record for themselves as a great law enforcement agency and they are envious—they say, "I wish we had a body like that to go in and clean up gambling in our jurisdiction. I wish we had a body like that to clean up prostitution."

Phoneying up the jurisdictional requirements doesn't dilute the FBI into a prostitution-chasing gang. It doesn't dilute their fine efforts into getting gamblers in some local place. The way to do it is to have better cops, better DA's, to have your court calendars up to date, to have lawyers with a sense of responsibility. You lift the moral tone of the community and get men to do a good job and everything will improve.

The CHAIRMAN. We haven't attained utopia yet. You are asking for utopia.

Mr. STEINBERG. Aren't we trying to all the time?

The CHAIRMAN. I agree with what you say about the FBI. But crime has become mobile.

Mr. STEINBERG. Is that really true?

The CHAIRMAN. New methods of transportation have caused the racketeers and the gamblers to use the automobile and the airplane and so forth. They are not confined to State lines. The police have difficulty crossing lines. They can't cross lines.

Mr. STEINBERG. Actually, I respectfully offer a suggestion, that that is not really as fundamental as it sounds. You know, all crooks have to go to the dentist once a year to get their teeth fixed. They go to vacation places. I suppose when they go to vacation places and calm their nerves, they are furthering their criminal enterprise because they would be jittery otherwise.

In other words, you can get to a silly point on what is furthering criminal enterprise. It seems to me when a man is in a conspiracy, if he is in a conspiracy which is across State lines and you get evidence of it in the regular traditional way of getting evidence—by witnesses and documents, putting them in court and proving it beyond a reasonable doubt—you can get people, even if the operator crossed State lines, if they have violated the laws.

But let's not create laws which are of this type in order to "get" somebody because we suspect them or because they are unpopular or because in the public eye they are suspect.

The CHAIRMAN. Didn't the New York State Crime Commission come out with a report and say that they were hampered because of the limitations that descend upon the police and local peace officers and that they needed something very much like these bills? I am not married to these bills. I offered them because I received an executive communication as chairman, and I felt it was my duty to offer them.

But I am not wedded to them in the sense that I am going to stick by them. I think they have been very weakly and artificially and imprecisely drawn. But I deeply sympathize with the administration which is trying to meet this problem head on.

We get evidence to the effect that they can't do anything with substantial success under the present conditions that exist because of the limitations of the local police. They need something national to be able to cross these State lines.

Mr. STEINBERG. That is what they say, Mr. Celler. I frankly don't buy that. I don't think that is valid. I have seen no chapter and verse on that.

Mr. McCULLOCH. Mr. Chairman, I would like to ask the witness this question. If what the chairman said is not in accordance with fact, how do you justify, or what method of reasoning do you follow, to rationalize this flourishing of crime in so many localities? Can we charge all of the States of the Union with inability or lack of desire to do that which should be done?

I will start right in your home community and say: What have you been doing? What has the district attorney been doing in your community? What has the grand jury been doing in your community? What has the mayor been doing in your community? What has the prosecuting attorney or the attorney general been doing? What have they been doing in Tampa, Fla.? What have they been doing in Schenectady, N.Y.? And if they haven't been doing anything and if

conditions are half as bad as we are led to believe and as we read in the newspapers, what is your solution?

We will be glad to have it.

Mr. STEINBERG. My feeling is this. I think it is unfortunate that in many communities—perhaps some which you have mentioned, perhaps others; there is no need to go into any specific community—there is crime. There is prostitution. There is gambling. There is corruption of the local organization. There is corruption of police.

I think gambling and prostitution and that type of violation are very corruptive of police, men who have to deal with it. I wouldn't be surprised to find that there were links with politicians in these things, too.

Is the answer, where you have something as local as that—has always been considered a local problem—just as sanitation is a local problem, and this is sanitation of souls in the community, if you will, is the answer to say: "Let's centralize it in centralized government?" Is the answer to say that the Federal Government—

Mr. McCULLOCH. Yes, I will be glad to answer that question although I am not on the witness stand.

Mr. STEINBERG. I am sorry, sir. I don't mean that.

Mr. McCULLOCH. I would say "Yes," there. It is time that something be done because in the olden days, if I can use that phrase, the things of which you are now talking were in large part, if not entirely, confined to the localities in question. That is not the case any more. Particularly it is not in the case of the small communities, away from the seaboard. The power of syndicated crime, and the power of racketeers has its inception many, many times far beyond the portals and hamlets of the Midwest.

I am asking you, as a Congressman from the Midwest, how do you propose to get at those conditions which are beyond the power of a sheriff of a county of 25,000, and we have counties of that population in my State, and of cities of 10,000. If you have any solutions, other than these bills, which are better than these bills, I will be the first to embrace them but I am not satisfied with people who find only fault with the only instruments that have been presented to us by which we can operate. Give us something better.

Mr. STEINBERG. My thought is this. It certainly is a great precaution of the people of this country who live in communities such as you describe, which do not have the money or the manpower or the ability to have bigtime, law-enforcement operations.

I would agree with you. I think, however, that these are traditional, and should be matters of State concern. I think every State should busy itself with having a statewide organization to investigate, to provide scientific investigation facilities; scientific methods of catching crooks, if you will, but this is a State concern.

Now, the Federal Government has involved an organization which everyone respects as a standard, the Federal Bureau of Investigation. I would think it would be perfectly proper to have a bill authorizing the FBI or the Justice Department to set up some coordinating group to offer its investigative facilities, to offer its work and its knowledge and its experience, to train men from the State organizations, to cooperate with them, to do scientific investigation for them, but I think that the main problem is getting evidence, and then presenting it in time-honored fashion, in a court of law by proper standards.

Mr. CRAMER. Title 1 of 6909, the omnibus bill, which I introduced, provides for the Office on Syndicated Crime to do that very thing in the Department of Justice.

Don't you think that it is a step in the right direction? You are operating with the local officials. If the Attorney General deems it advisable in a certain situation, he can advise the Office to assist in the prosecution; he can make its facilities available to the local law enforcement officials. Is that not the step you are talking about?

Mr. STEINBERG. I think that is a step in that direction.

I think the Justice Department, by tradition, has had an honorable record. I mean, I think regardless of which party has been in power, the Attorneys General we have had in the United States have been honorable men.

I think if you had an organization such as you suggest and if that were to make its facilities available to those communities which don't have the monetary facilities, the people with training to cope with their own situations, that to me, is the honest way to get to the problem, which is uncovering the evidence.

The CHAIRMAN. Wait a minute; Mr. Cramer does not tell you in addition to the tradition, he had embodied in his bill, all these other bills, besides.

Mr. STEINBERG. I would say this is an alternative to the other bills. This is what I would do instead of the other things.

The CHAIRMAN. In other words, you would want to limit it to setting up some sort of an additional agency within the Department of Justice, that would help these State officials track down these racketeers and these syndicated gamblers, and so forth.

Mr. STEINBERG. Yes, sir. You see, I believe that the creation of new, ill-defined, loosely drawn crimes, is bad for the whole community; is bad for everyone; but the tools of investigation are important. The tools of investigation.

Now, to create a body which is going to do proper investigating is a good thing.

The CHAIRMAN. The minute you have the FBI doing the very thing that you speak of—even if it is so-called aiding a State official—would you not then be creating or molding the FBI into a police department to track down all manner and kinds of crime? Do you want that?

Mr. STEINBERG. Frankly—

The CHAIRMAN. You certainly said, at the inception of your argument, you don't want that.

Mr. STEINBERG. My feeling of this bill is this:

I think the FBI has been able to keep these high standards, not only because, fortunately, in their long tradition, they have not been forced to come in contact with the kind of demoralizing local situation, such as gambling and prostitution, which have traditionally been the lowest forces, which have sapped the honesty and vitality of police. They have not been forced to go near it. Pitch defiles anyone who touches it. Pitch is dirty. Anybody who has to spend his life and career with prostitutes is not going to be the same man that started out. Anyone dealing with gamblers 24 hours a day for years, is going to be corrupted. I don't think this is the kind of activity, running any kind of a police course. Even in New York, where I come from, with 25,000 policemen, where they have always had a high

standard, they constantly shake up the vice squad. They find that when a man stays in the vice squad too long, the pitch has defiled him. It is just not good.

Mr. McCULLOCH. Are there any crimes or offenses in which you think the Federal Government should accept responsibility and prescribe penalties?

Mr. STEINBERG. Penalties? Yes, sir. I think the traditional ones you have, certainly all those which affect interstate commerce.

Mr. McCULLOCH. How about antilynching? Are you in favor of that legislation?

Mr. STEINBERG. I, sir, come from a community where we don't have lynching. For me to give advice to people who have to deal with it on a responsible basis would be, perhaps, not anything that is thought out. If you ask me, I would certainly be against anything which stops lynching, and—

Mr. McCULLOCH. You would be for it, you say?

Mr. STEINBERG. I would be for anything that stops lynching; whether you can stop lynching by laws, I don't know. I don't think you can stop a lot of things by law.

Mr. McCULLOCH. You can deter them, can you not?

Mr. STEINBERG. If you can, I am for it.

Mr. McCULLOCH. That has not been the experience in the Anglo-Saxon system—we have deterred most offenses that are wrong in themselves by legislation, have we not?

Mr. STEINBERG. Not necessarily. My experience has been that when you pass a law which is not enforced, it breeds disrespect for other laws.

The 18th amendment was our greatest example.

Mr. McCULLOCH. Do you think these laws will not be enforced or cannot be enforced or that they are not wanted by law-abiding citizens? Do you think that the responsible people of communities of this country are looking upon this blight with a calm view, or do you think that they are really concerned at the strength and effectiveness of syndicated gambling and racketeering that is spreading over the land?

Mr. STEINBERG. I think all well-intentioned, honest people are concerned about all kinds of crime, particularly this older specter of syndicated crime.

If there is syndicated crime—and there seems to be evidence there is syndicated crime—it should be put down. It should be stopped. No one can stand up and say he is for it. It would be stupid. It would be wrong. I don't believe you can put it down by passing a law. I don't think you can.

Mr. CRAMER. What are you going to do about such things as the gangland murder of Anastasia in New York; the Touhy murder in Chicago; 22 murders of a gangland nature in my own district, where the local officials have even asked for help and it has been denied.

How are we going to fill that gap in law enforcement, in connection with gangster activities?

Mr. STEINBERG. We have done that in New York. The Murder, Inc., people have been prosecuted and sent to the electric chair. I worked with Tom Dewey when he got Luciano.

Mr. CRAMER. Who has been prosecuting the *Anastasia* case?

Mr. STEINBERG. That is a New York case. I don't say you are going to have 100 percent success. The ingenuity of people in hiding their malefactions is going to continue.

Mr. FOLEY. Let me interrupt here. We are talking about gambling. As an ex-prosecutor, in New York, you know one of the biggest layoff men was Frank Erickson.

Mr. STEINBERG. When you say do I know that, as an ex-prosecutor, I represented Mr. Erickson in a case.

Mr. FOLEY. Was not Mr. Erickson convicted by Mr. Hogan in New York County?

Mr. STEINBERG. Yes.

Mr. FOLEY. What was the basis of that?

Mr. STEINBERG. I represented him, and I prefer not to discuss it for that reason.

Mr. FOLEY. What was the indictment predicated upon?

Mr. STEINBERG. Gambling.

Mr. FOLEY. Violating the laws of New Jersey, too.

Mr. STEINBERG. No. No.

Mr. FOLEY. Of New York County?

Mr. STEINBERG. Of New York County laws. That is what I was getting at before on something that Mr. McCulloch asked. I would like to come back, with your permission, where there is activity that goes across the State line, it clearly does in many cases, you can get them in both places. You can get a man in two States. You don't have to create a third place to get him.

Mr. McCULLOCH. Of course you can. I know there is machinery to get them. But there is not the ability in some of the political subdivisions that I have mentioned; and secondly, in some instances, there is not the desire to get them; nor is there the public support in those kinds of communities.

I repeat, we are confronted with this condition in this country. We do not have, in many political jurisdictions or subdivisions with a total population of less than 30,000, and there are many such counties in the United States the law enforcement officers to do the job and they can't get them because there are just not enough people in those counties. We have to meet that situation.

Mr. STEINBERG. Let me say, in response to your question, sir, your comment, I recognize as a man who has been in the courts for 25 years, in the State and Federal courts, I don't think I am being unfair to my State court colleagues when I say there is general recognition that the Federal community—that is, the Federal courts—are staffed by men appointed for life. That is, judges are a very high type group of men. The Federal prosecutors have uniformly been fine men. The FBI is recognized as having a high type group of men. The Treasury agents, the Secret Service—you have a group of people which commands respect and perhaps more respect than the State officials in many communities.

Why is that? Because they have dealt with a certain level of activity. They have dealt with the kind of things which command public support, just as you said a moment ago; a community may not be very much against gambling, and when a man is called in by the local cops, they acquit him even though he is well known to be a gambler. That may discourage him, and it may go on that way. If you take that sort of activity, and put it in the Federal side, you are going to weaken

it. You are going to weaken that group, being above this type of activity, which commands respect.

Mr. McCULLOCH. Again, I would like to interpose by saying this. Part of what the gentleman said is true. Maybe all of it is true, but in addition to what the gentleman has said, there are political subdivisions in the United States, where there is not enough work for a full time State's attorney or a full time prosecuting attorney. In such counties there is a general lawyer for a political subdivision or county. How can he cope with men of your caliber, who have given their life to the defense of people charged with violations of law?

Furthermore, how are you going to get the top man in this racketeering, and in this criminal syndicate, who is in New York City or in Timbuctoo, who has hirelings and minor, penny-ante gamblers out in these political subdivisions of that nature.

That is one of the things that has not received the attention of the people who lived in the metropolitan areas, where they have the best scientific, the best legal, and the best other brains that are available on the side of law enforcement, which we cannot, in some of the political subdivisions in the country, afford or get to our political subdivisions.

Mr. STEINBERG. I believe many small subdivisions that you speak of, many small places, do not have the incentive for big time racketeers to go in and operate, because there is not the money there. There is not the type of criminal activity you speak of.

Mr. McCULLOCH. It is a part of the whole ring, where the fingers touch out to the automatic vending machine, or what do you call these machines where you put a nickel or a dime or a quarter in and you gamble? What do you call them? Slot machines, and pinball machines, and so on.

The CHAIRMAN. Mr. Steinberg, it strikes me that even if you would set up, for want of a better name, a Ministry of Aid and Assistance to State Prosecuting Offices in the Department of Justice, even if you would endow the FBI with powers to aid, give assistance, advice and counsel, to State prosecuting officers, you still have the difficulty, without statutes of the type that are before us, or proposed statutes, to obtain the evidence, because of the nature and the form of the evidence.

For example, we hear tell that there is being sent, across wire and wireless facilities, certain track site information. The sending of it now is perfectly legal. The idea is to make that sending illegal. We hear that certain paraphernalia—gambling paraphernalia—is sent through the mails.

We had testimony this morning about punch boards. It is legal to send it through the mails. Our idea is to pass some statutes to make it illegal, so that the State officials can get the evidence more easily. It is not only the FBI coming into the picture. They have the same difficulty, if we do not pass these statutes.

Now, we have the Attorney General saying in summary, on page 10 of his prepared statement:

In summary, our information reveals numerous instances where the prime mover in a gambling or other illegal enterprise operates by remote control from the safety of another State—sometimes half a continent away. He sends henchmen to the scene of operations or travels himself from time to time to supervise the activity and check on his underlings. As for the profits, he receives his share by messenger.

Now, it is the difficulty of getting evidence to establish illegal operations that perplexes us and for that reason we want to pass some sort of statutes so as to give instrumentalities with which we can strafe these gamblers and racketeers and syndicate criminals.

That is the trouble here. It is not only giving the FBI some powers to aid. That is not going to help at all. That is simply trying to cure a cancer with a plaster.

Mr. STEINBERG. Mr. Chairman, this is where I part company with your philosophy. When you say you have got to give new tools to get a man who is benefiting from gambling, you are making a moral judgment, that because a man makes his living at gambling, and makes his money at it, we should go out and get him. Now, it seems to me if you want to stop horserace gambling, why don't you stop racehorses?

It is perfectly legal to run a horserace. The States takes its share of the proceeds. It is perfectly legal for a citizen to go up there, if he has \$2 to pay at the admission gate; if he has enough money to pay to take a taxi out and back, he can indulge to his heart's content in gambling. The man at the other side of the wicket pays his winnings. He is a State employee. That is not considered immoral or wrong; but if you do it around the corner, it is a crime. I cannot see the logic of that. I cannot see the great public disservice in a man being a gambler and catering to the desire of people to bet, and then say, "This man is so antisocial we should pass laws to get him." We don't have to pass laws to get him. We can stop gambling, but we don't want to do that, do we?

Mr. ROGERS (presiding). May I inquire whether you concede there is such a thing as organized criminal syndicates in this country?

Mr. STEINBERG. I imagine there is conspiracy from time to time of people who get together to make money, and don't care where they break statutes and violate laws.

I think they should be put in jail. I think very often, they are. Very often, they get away with it.

I don't think the way to get syndicates in jail is to pass laws like this.

Mr. ROGERS. Do you believe there are syndicates that operate more from time to time, but for long periods of time?

Mr. STEINBERG. I tell you, Mr. Chairman, I don't believe there are as many syndicates as people say. I have been on both sides of criminal law for 25 years. I say a lot of this is heated imagination of writers, and the heated imagination of people who have some reason for saying it. I don't deny that there are crooks; there always have been; there always will be. I don't deny it is a good thing to try to put them in jail but creating fiction is not the way to do it.

Mr. ROGERS. Do you feel since there are no established syndicates, there is no need for such laws?

Mr. STEINBERG. I did not say that at all.

I say there may be established syndicates? There may be crooks who work together on a long-term basis. I don't think these laws will help convict them.

Mr. ROGERS. In other words, if there are established syndicates, you don't need these laws to get them cleaned up?

Mr. STEINBERG. I think these laws are badly drawn; harmful; will not result in cleaning anybody out; and will create a situation where it will be within the realm of possibility that people will become tar-

gets of other people, depending on who is in power at the time; who is unpopular at the time.

Mr. CRAMER. Do you think the Apalachin meeting is what they said it was? Was it a gathering on behalf of somebody who was sick, or was it a social gathering or was it a meeting of the syndicate?

Mr. STEINBERG. This is another case which I find difficulty in discussing because I represented somebody there. I represented one of the persons involved, before the U.S. Supreme Court. I don't want to comment except to say this. I think whatever happened at the Apalachin meeting, if they planned the murder, it is up to the prosecutors to prove their case within the framework of constitutional guarantees.

Mr. CRAMER. Let's take the 22 murders that occurred in my district.

Mr. STEINBERG. Which district is that?

Mr. CRAMER. Tampa, Fla.—over the last 25 or 30 years. One, a year ago, with a sawed-off shotgun, typical gangland style murder. Three or four years ago, the local authorities asked the FBI to help them, saying in their opinion, the Maffia did it. You don't think the Maffia exists.

Mr. STEINBERG. I imagine there is a Maffia; yes.

Mr. CRAMER. You don't think Murder, Inc., exists, as an organization?

Mr. STEINBERG. Well, when you say an organization, Murder, Inc., was a newspaper name given to a bunch of men who were in a criminal conspiracy to kill other people. They were exposed. They were convicted in New York at the time I was in the prosecutor's office.

Mr. CRAMER. That was their business.

Mr. STEINBERG. That was part of their business.

Mr. CRAMER. That was a part I am particularly concerned with. They were involved in other equally bad things.

Mr. STEINBERG. Right. Right. They sold narcotics. They did all kinds of bad things. They did not mind killing people.

Mr. CRAMER. They went so far as to call their jobs contracts; if you wanted a guy rubbed out, you contacted the head man. He decided whether it should be done in keeping with their policies and a contract was let out. You paid so much money and the guy was wiped out, right? And usually, as a matter of fact, as I understand it, as a matter of policy, it involved people who were concerned and involved in organized criminal activities. That was, in effect, their jurisdiction, they thought.

Mr. STEINBERG. I would agree.

Mr. CRAMER. Now, these powers of local law enforcement, the sheriff, or the State's attorney, in Tampa, for instance, how is he ever going to prosecute anybody? He never even had a suspect down there on any of these killings. Why? He says they were shipped in and shipped out.

Don't you think the Congress of the United States, when the Attorney General requests such authority, when the local authorities have asked for such authority, that some help be given? Don't you think that necessitates Congress taking some action?

Mr. STEINBERG. I agreed with you before. I said I thought that the portion of your bill which you refer to, creating an arm of the Justice Department to give aid and assistance in investigating crime to local communities that asked for it is a good idea. That is what they have

in Scotland Yard. The local police organizations in Scotland Yard, in the rural community, which is faced with a murder they cannot solve, asks Scotland Yard to come in and they do it. I think that is useful. If you have a community such as Mr. McCulloch described, with a limited number of people, without the facilities to investigate this type of crime, I think they should be given every facility, by the Federal Government.

Mr. CRAMER. You don't think it should be a Federal crime for a person to travel in interstate commerce to commit the crime of murder involved in syndicate activities?

Mr. STEINBERG. That should be a crime. The way I would draw the statute would be, a man who travels across a State line for the purpose of committing a murder and who performs some act in furtherance thereof, is guilty of a felony and that would be fine; but not a man who crosses a State line with intent.

Mr. McCULLOCH. How can you suggest reaching the brains of that organization or conspiracy, who selects Mr. X to cross lines for the purpose of committing the murder that is planned outside the jurisdiction, in another State?

Mr. STEINBERG. Well, I would suggest doing it by the tried and true traditional means of proof beyond a reasonable doubt, on evidence gotten by competent, hard working police officers; which always, from time immemorial, has been our problem. It will always be, not matter what you do.

It has been done. You mentioned Murder, Inc. Murder, Inc., was prosecuted in New York State, under existing New York laws, with existing New York cops, and they were all sentenced to the electric chair.

Mr. FOLEY. In that case, Murder, Inc., was in Brooklyn. We also sent Teitelbaum to Los Angeles to testify. We offered Reynolds and Rosenbaum to everyone.

Mr. STEINBERG. You have uniform statutes, if a witness leaves New York and goes to Florida to hide, he can be subpoenaed to New York by the interaction of the two States. That is good. I am for cooperation. What I am pleading with you gentlemen to consider is, you are the guardians of our constitutional liberties. I know you are concerned, genuinely and sincerely, to get laws which are going to help the majority of people. When you do that, you have the responsibility of seeing our traditional safeguards are not scrapped. Once they are scrapped, they are gone for good.

Mr. CRAMER. What is your attitude with regard to establishing a crime safeguard similar to title 2 in my bill?

Mr. STEINBERG. Which bill is that, sir? That is the omnibus bill?

Mr. CRAMER. That is right.

Mr. STEINBERG. I did not get a copy of that until a few minutes before. Mr. Crabtree gave it to me.

Mr. CRAMER. That avoids the objection that you raised to travel in interstate commerce, in making it a crime to use—the question of intent—by making it a crime to—

Mr. STEINBERG. I would certainly like to study this. I don't pretend to be able to get off my head, that which you have undoubtedly carefully considered when you drew this. If the Federal jurisdiction is there, if the other safeguards are there, I would be for it. I cannot say it now.

Mr. CRAMER. Would you be willing to make an analysis of this omnibus bill? For instance, the obstruction of justice aspect of title 10, page 27?

Mr. STEINBERG. Mr. Cramer, I will get a committee of my organization, as I mentioned. We will be happy to study this in detail. We will be very happy to tell you our opinion, whatever that is worth to you, because we want to be helpful if we can. I recognize, just as Mr. McCulloch asked me, what you do. You have the responsibility and the problem. I am not here to throw dust in your eyes, or obstruct you. I just wanted to tell you we deeply respect this public-spirited group of people, and what you are trying to do. We just want to tell you, you have to adhere, if at all possible, and whether possible or not, to these fundamental safeguards and once you let them go, you never get them back.

I think the problems you are dealing with can be solved. I think they are not easy to solve, but I think these bills you have here go much too far in loosening and creating new crimes, for the public good.

Mr. ROGERS. Do you not believe enforcement officers, throughout the country, who are making numerous requests to the Federal Government, should get aid in apprehension of criminals?

Mr. STEINBERG. I don't know.

Mr. ROGERS. If that is the case, would you not want to give them additional assistance in the apprehension of criminals?

Mr. STEINBERG. You are running two things together—a request for aid from law enforcement people. Getting facts, getting evidence, should be honored, helped, and cooperated with; but if a man in Los Angeles or North Dakota says, "We have a hard character here. We don't know how to deal with him. Pass the laws to make it illegal for him to breathe," that I am not for in any circumstances. If a man has violated the law, if a man has been a crook, it is a question of getting evidence to put him in jail. I think we ought to have more and better facilities to help get that evidence. I don't think we ought to say, "Here is a man who ought to be in jail. I don't know what he did. Let's pass a statute to get him in jail." I think that is unconscionable. I think that is confusing what you asked me.

If any law enforcement officials are writing to the Federal Government, saying, "Help us get our local big shots in jail because we don't know how to get them in jail," there are two ways of doing it.

One, by getting evidence of existing crimes, which is fine; and secondly, to create new crimes to fit the situation, which I think is wrong.

Mr. ROGERS. Any further questions, gentlemen?

Thank you very much, Mr. Steinberg.

Mr. STEINBERG. It is a pleasure.

Mr. ROGERS. We appreciate the contribution you made to our thinking.

Mr. CRAMER. When you are in the process of making your analysis of the omnibus bill, will you also include any suggestions you have as to modifications?

Mr. STEINBERG. Yes, sir.

Mr. CRAMER. Alternative language?

Mr. STEINBERG. I will be very happy to do that, Mr. Cramer, and may I ask, what is your timeschedule, sir?

I mean, will this be a committee for some length of time.

Mr. FOLEY. I would say approximately 2 to 3 weeks.

Mr. STEINBERG. Very well. We will try to get you some. Thank you.

Mr. McCULLOCH. Mr. Chairman, I was not here throughout the entire testimony but I am advised that there were no comments on this bill, which would materially amend the Fugitive Felony Act. I would be glad if you, in making your comment, would make—

Mr. STEINBERG. Which one is that?

Mr. McCULLOCH. 468. Title 8 of the omnibus bill. When you are making your analysis and comments and suggestions—

Mr. STEINBERG. This one bothers me, sir, because this has the same advice that I feel is suggested in the first one, that makes a crime of traveling with intent, and I think—

Mr. FOLEY. No. No. Excuse me. That is already existing law. It is merely broadening it. The crime must have been committed and the man flees to avoid prosecution, custody, or confinement. There is no question of intent under the Fugitive Felon Act today.

Mr. STEINBERG. It says:

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody \* \* \*.

Mr. FOLEY. That has been on the books since 1934, that language.

Mr. STEINBERG (reading):

\* \* \* to avoid giving testimony \* \* \*.

Mr. FOLEY. The crime must have been committed. He must flee to avoid prosecution, custody, or confinement.

Mr. STEINBERG. It does not say in the bill that that is so.

Whoever moves or travels in interstate or foreign commerce, with intent \* \* \* to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime \* \* \*.

It does not say for a crime he committed; for a crime, or attempt to commit a crime, punishable by death or imprisonment for a term exceeding 1 year under the laws of the place where the fugitive flees—

or (2) to avoid giving testimony in any criminal proceedings \* \* \* shall be fined \* \* \*.

It does not say he committed a crime. That does not say he was convicted of a crime. It says he flees, with intent to avoid it.

Mr. FOLEY. Under the case law, you must show it. This has been on the books since 1934.

Mr. STEINBERG. The case law may have it. What is the change. This does not indicate what the change is.

Mr. FOLEY. The change is this. As the law exists today, it is murder, arson, felonious assault, kidnaping—six major felonies. This broadens it. Any offense punishable by more than a year in prison.

Mr. STEINBERG. Well, the thing that bothers me about it is, do you really want to broaden the Federal jurisdiction so that anything which any State legislature has said, shall be punishable for a year, is going to be a part of the Federal consideration? I agree that there are many, such as the racketeering crimes in the Hobbs Act; certain things which you have come to feel are necessary parts of Federal jurisdiction and experience has shown have been valid extensions of it. These things may well be in such a statute, but anything which any State legislature says is punishable for a year, I suggest to you is exceedingly

broad, to take in the kind of activity which will just flood you with jurisdiction you don't want.

This is punishable by death or imprisonment for a term exceeding 1 year. In New York, this is typical. In New York, a felony is anything punishable by imprisonment for more than a year. Misdemeanor is up to a year. However, under the New York City Morals Commission Act, even for a misdemeanor, you can get 36 months in a pen.

This would take in everything but spitting on the sidewalk in New York; may be second offenses for drunkenness.

Thank you very much.

Mr. ROGERS. Thank you very much for coming here today. This meeting stands adjourned until tomorrow morning at 10 o'clock when various witnesses will be heard.

(Whereupon, at 4 p.m., the committee recessed, to reconvene Friday morning, 10 a.m., May 19, 1961.)

(The following report was subsequently submitted for the record:)

NATIONAL ASSOCIATION OF DEFENSE LAWYERS IN CRIMINAL CASES—REPORT ON PROPOSED FEDERAL ANTIRACKETEERING LEGISLATION (H.R. 648, H.R. 1246, H.R. 3021, H.R. 3022, H.R. 3023, H.R. 3246, H.R. 5230, H.R. 6571, H.R. 6572, H.R. 6573, and H.R. 6909)

(Prepared by Richard A. Green, chairman, committee on legislation)

#### GENERAL APPRAISAL

Taken as a group, these bills suffer from the misapprehension that organized criminal activity can be successfully attacked by increasing the number of Federal crimes. They ignore the fact that large multistate illegal enterprises already violate existing Federal laws, let alone State laws, in areas dealing with liquor, narcotics, gambling, prostitution, obscene literature, fraudulent schemes, and obstruction of commerce by extortion or threats of violence. Accordingly, it is not likely that adding to the catalog of crimes committed by such an enterprise will drive its members out of business.

At the same time, that they fail to achieve their objectives, these bills could have a debilitating effect on present law enforcement activities. Many of them are defective in draftsmanship because they unintentionally sweep into the orbit of organized criminal activity all kinds of local, petty infractions, not only of criminal laws, but also of regulatory codes, and condemn legitimate enterprises which may run afoul of such regulations. The consequence would be dilution of Federal resources in investigation and prosecution of essentially local matters and a tendency for local authorities to shirk their responsibilities. Federal courts, already overburdened in some districts by petty offenses turned into "Federal cases," would further suffer needlessly. Moreover, the making of Federal crimes out of essentially local offenses, unless clearly warranted, would unnecessarily intensify the problems of overlapping jurisdiction, such as the danger of multiple prosecutions for the same offense and the inadequacy of immunity exchanged for privileged testimony to protect the individual outside the forum.

A few of the proposed bills approach the problem of sophisticated, multistate criminal enterprises from the point of view of giving more sophisticated weapons to law enforcement agencies. Strangely enough, these bills fall in not going far enough. At long last there is an attempt to broaden significantly the Federal prosecutor's power to grant immunity in exchange for privileged testimony; but it is still unnecessarily limited to certain areas of crime. There is embodied in one of the bills the notion of a national crime-study office which would collect and correlate information, make studies and devise new techniques of enforcement and would be concerned with local as well as Federal problems and be able to render assistance to the States. One bill makes a tentative approach to the paradox of treating illegal enterprises like legitimate ones for income tax purposes while pursuing them as malefactors for their criminal violations.

To the extent that these proposed bills merely federalize petty offenses, they are unwise and unnecessary. To the extent that they attempt to improve the

effectiveness of enforcement of existing Federal laws and recognize what is truly in the national interest, these bills are on the right track.

#### DETAILED COMMENT

##### *H.R. 468 and H.R. 3023*

These almost identical bills would expand 18 U.S.C. 1073 (Fugitive Felon Act), which makes it a crime, punishable by a fine or imprisonment up to \$5,000 or 5 years, to travel in interstate commerce with intent to avoid local prosecution or to avoid giving testimony in local criminal proceedings. Now limited to serious specific crimes (murder, kidnaping, robbery, etc.), the amended statute would embrace any crime punishable by imprisonment for a term exceeding 1 year under the laws of the place from which the fugitive flees.

The Fugitive Felon Act as it now stands is hypocritical. While many complaints are filed and Federal warrants issued under it, few, if any, prosecutions ensue. The act is designed to enlist the aid of Federal enforcement agencies in apprehending fugitives and to employ the less cumbersome and comparatively perfunctory requirements for transferring a Federal prisoner from one district to another, as opposed to using extradition procedures between the States. Once the felon is on home ground, the Federal complaint is dismissed and local officers take him into custody. A criminal statute so devious as this is unworthy of the Federal Government. Instead of expanding its application, efforts should be bent toward finding direct procedures for giving aid to State authorities, within a constitutional framework.

In any event, if Federal jurisdiction is to be enlarged under this act, it should be done by adding specific crimes to the list already there, rather than by replacing the list with an omnibus clause. In addition to federalizing many petty offenses far removed from the national interest and diluting the resources of Federal agencies, the proposed bills would, in effect, place the scope of this act—and, thus, the creation of Federal crimes—in the hands of the State legislatures which fix the maximum punishments for local crimes.

##### *H.R. 1246 and H.R. 3021*

Both of these bills would extend the granting of immunity from prosecution where testimony is compelled: H.R. 1246, to "any matter which affects interstate or foreign commerce or the free flow thereof" (amending 18 U.S.C. 3486) and H.R. 3021, to specific racketeering crimes, i.e., obstruction of commerce by robbery or extortion (adding new section 18 U.S.C. 1952).

The power to grant immunity in exchange for privileged testimony is an excellent and valuable prosecutive weapon, consonant with the public interest and individual civil liberties. There is no reason why Federal prosecutors should be denied this weapon which has proved itself to be so useful to local authorities. Indeed, as broad as H.R. 1246 is, it should be broadened still further in order to apply to all Federal crimes.

In amending 18 U.S.C. 3486, however, Congress should make it utterly clear that it intends Federal immunity to extend to protection from State prosecution for State offenses revealed in the compelled testimony. Since it has the power to do so, and since it is not faced by the dilemma revealed in *Knapp v. Schweitzer* (357 U.S. 371 (1958)), resulting from the opposite situation, simple fairness dictates that complete protection should be accorded for compelled testimony.

##### *H.R. 3022*

This bill would add three new sections to title 18 aimed at the gambling rackets through suppression of interstate transmission of gambling information. Several of the terms used in the new sections would be defined in amendments to 18 U.S.C. 1081.

New section 1084 would require every person required to buy a Federal wagering tax stamp to submit an affidavit (for use by the Department of Justice) stating whether he had transmitted or received gambling information in interstate commerce during the preceding year and whether he intended to transmit or receive such information during the period of his registration. He would have to submit a supplementary affidavit within 10 days after changing his intention as expressed in the first affidavit. He would not have to state when, where or to or from whom the information was transmitted or received.

New section 1085 would make filing a false "or misleading" affidavit punishable by a fine or imprisonment up to \$5,000 or 1 year, and failure to file punishable by a fine or imprisonment up to \$10,000 or 2 years.

Such new provisions appear to have little or no value in prosecuting gambling crimes. For those who should buy a tax stamp but do not, it is merely one more count to add to the indictment. For those few who might buy a tax stamp, this new requirement would merely serve to drive them further under cover. In the case of those—even fewer in number—who might file such an affidavit if the facts to be stated are not elsewhere made a crime, the value of the affidavits is negligible.

On the other hand, such laws—even though useless—would have the undesirable effect of spreading the doctrine that the way to catch criminals is by requiring them to make statements which, in effect, tend to incriminate themselves, and prosecuting them for failing to make those statements. Assuming that such a requirement is constitutional (as it may well be if bookmaking and the transmission of gambling information are not Federal crimes), such erosion of the privilege against self-incrimination should not be helped along by unnecessary legislation.

The third proposed new section—1068—would make criminals out of wire and radio common carriers and any of their employees who provide communications service to any person who they have “reason to believe is a person required by section 4412(a) of the Internal Revenue Code of 1954 to be registered without informing the Department of Justice of the circumstances which give rise to such belief.” This impossible burden to be imposed upon innocent laymen (let alone law enforcement authorities), the novelty of making a crime out of failure to report information useful in crime detection and the nebulous and vague elements which make up this crime indicate that the proposed bill takes the wrong approach to the purpose it wishes to serve.

If such information is desirable and helpful, the Attorney General could be delegated authority to serve a demand letter upon such common carriers as he chooses, requiring the statement of such information as he specifies, about certain kinds of described installations (in the same manner that the Secretary of the Treasury may require certain persons to report periodically the disposition of materials used in bootlegging, 26 U.S.C. 5213). Failure to respond could then become a crime. Under such circumstances, the burden of determining when and what information must be obtained by a person in order to make him liable for reporting it is on the law enforcement authorities and not upon innocent individuals.

#### *H.R. 3246 and 6571*

Both of these similar bills would add a new section (18 U.S.C. 1952) to prohibit interstate transportation of wagering paraphernalia and records.

Despite their specific exclusion of common carriers in the usual course of business, these bills are nevertheless defective because they fish with a net rather than a line. By imprecise definition of the types of gambling (in a numbers, policy, bolita, or similar game), of the materials transported and of the persons who do or cause the transporting, the proposed laws would make it a felony, punishable by fine or imprisonment up to \$10,000 or 5 years, for bingo equipment to be sent to a church in a locality where such activity is legal, for a numbers player to cross a State line with a memorandum of his bet in his pocket and possibly for a sports reporter to transmit the names of the starting pitchers or the final scores in a baseball game.

H.R. 3246 does not even require that the carrying or sending of betting paraphernalia be knowingly done.

#### *H.R. 5230*

This bill, carefully drawn to overcome most of the objectionable features of other bills extending Federal jurisdiction over local crimes, illustrates clearly the basic error of leaving definition of Federal crimes to State legislatures. It would add two new sections to chapter 19 of title 18 dealing with conspiracies.

New section 373 would make it a Federal crime for two or more persons to conspire to commit any “organized crime offense” against any State if any conspirator, to effect the object of the conspiracy, sends or receives any article, mail or wire or radio communication in interstate commerce. While the maximum punishment is fixed at a fine of \$10,000 or imprisonment of 5 years, the maximum is reduced to conform to a lesser maximum, if any, fixed by the State for the offense, the commission of which is the object of the conspiracy.

The weakness of this section is that “organized crime offense” is defined as any offense proscribed by the laws of, or the common law as recognized in, any State “relating to” gambling, narcotics, extortion, intoxicating liquor, prostitution, criminal fraud, or false pretenses, or murder, maiming, or assault with intent to inflict great bodily harm.

Such an approach sweeps into the Federal net all kinds of petty infractions far removed from the national interest, with consequent harm to the efficiency and effectiveness of the Federal courts and of both Federal and State law enforcement agencies.

On the other hand, Federal laws presently permit Federal prosecution for specific offenses in nearly all of the areas of crime listed. The better approach to extending Federal jurisdiction, where interstate facilities are used to effect the crime, is by defining the specific crime or criminal operation toward which Federal law enforcement energies can desirably be directed. The three local offenses here listed which are not presently within Federal jurisdiction—murder, maiming and assault with intent to inflict great bodily harm—are serious enough and, importantly, sufficiently specific to serve as a beginning. In the area of multistate racketeering enterprises, additional specified criminal activities can be prohibited, using the jurisdictional formula proposed in this bill.

The other new section (374) is ill-considered. It would prescribe the death penalty or, if death is not recommended by the jury, any period of years up to life imprisonment for every conspirator where, as a result of any conspiracy prohibited by chapter 19, any person is murdered. Aside from the fact that no new legislation should be passed which leaves punishment to the jury without setting forth the procedure by which the jury should arrive at its decision, the proposed law would impose the risk of a death penalty on every member of a conspiracy, no matter how minor or peripheral his participation or how petty might be the offense he has conspired to commit, if another member of that conspiracy, who under present law does not even have to be known to him, should in the course of the conspiracy commit murder. While the theory of conspiracy does impute to one the act of another and, in felony-murder, a killing by one can be imputed to another, burdening someone with a crime conceivably so remote from and so far outside the risk and contemplation of the minor offense he may have joined in committing cannot be approved by rational justice.

#### *H.R. 6572*

This bill, adding new section 18 U.S.C. 1952, would make a Federal felony, punishable by fine or imprisonment up to \$10,000 or 5 years, of mere traveling in interstate commerce with a particular state of mind: intent to distribute the proceeds of an unlawful activity, intent to promote, manage, establish, or carry on an unlawful activity, etc.

"Unlawful activity" is defined as (1) "any business enterprise involving gambling, liquor, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States" or (2) extortion or bribery.

While this bill is directed at extending Federal jurisdiction over large-scale criminal organizations, it also embraces many legitimate business enterprises which unwittingly or peripherally may commit violations of numerous and petty State or Federal regulations, since the interstate travel and intent required do not relate to furtherance of the crimes but to furtherance of the business enterprise. Thus, the cafe owner who occasionally runs afoul of local liquor regulations would be committing a Federal felony if he crossed State lines legitimately to promote his cafe business. A similar situation might exist for pharmacists and their occasional problems with petty narcotics regulations.

In any event, remedying this defect alone would not make this bill acceptable. First, even if the travel prohibited were limited to that which is in furtherance of the criminal offenses, the kinds of offenses included in the bill are nevertheless in many instances local, petty infractions. Federal jurisdiction in the four areas chosen for this bill is presently extensive enough to permit effective Federal participation in combating organized crime. Secondly, the notion of making an ordinary, innocent act such as travel a crime, depending upon the traveler's state of mind, is repugnant. It invites prosecution by remote inference, not always, of course, in itself unavoidable, but which opens the door to conviction on long-past activities and on disreputable associations. It is far better to follow the traditional mode of establishing Federal jurisdiction upon the interstate transportation or sending of something finite from which clear and direct inferences can be drawn, i.e., a letter in furtherance of a fraudulent scheme, stolen goods, obscene literature, etc.

#### *H.R. 6573*

By adding new section 18 U.S.C. 1084, this bill would prohibit leasing, furnishing, maintaining, and using any "wire communication facility" for interstate transmission of bets or wagers or of "information assisting in the placing of bets

or wagers" on any sporting event or contest. "Wire communication facility" is defined in an amendment to 18 U.S.C. 1081.

While this proposed law might strike a blow at large-scale professional gambling, it is distinctly distorted in its application. It punishes the use of Federal wire facilities but excludes wireless and mail communications. It punishes gambling on the outcome of sports events but excludes gambling on numbers or policy.

On the other hand, this bill would embrace persons whose crime, if any, is hardly of the stature of a Federal felony, such as the horseplayer who places his bet over his own telephone and who may merely be asking someone to place it for him at a legal racetrack, or college students betting on the outcome of the Harvard-Yale game. Similarly, by prohibiting transmission of information assisting in the placing of bets, this bill makes a Federal crime out of transmitting all sporting news, i.e., names and past performance of the participants, their general health, etc.

#### *H.R. 6909*

This is an omnibus bill, to be cited as the "Antiracketeering Act of 1961," which includes some of the legislation proposed in individual bills and also proposes a few different laws. There are 11 titles in the bill.

Title I: This provision would establish an Office on Syndicated Crime in the Department of Justice. Its defined functions—assembling, correlating, and evaluating intelligence, making studies, developing specialized techniques for prosecution of syndicated crime, making available its intelligence and assistance to both Federal and non-Federal governmental law enforcement agencies—are all laudable and, hopefully, beneficial. The difficulty with this proposal, however, lies in its definition of "syndicated crime": Substantial concerted activities in, or affecting, interstate or foreign commerce, where any part of such activities involve violations of law, Federal or non-Federal.

Literally, this definition embraces General Electric and Westinghouse and all substantial industrial organizations which might violate the antitrust laws; large construction companies which frequently have difficulty with local building codes, and trucking companies whose trucks are occasionally overweight. While the phrase "substantial concerted activities" is novel enough to pose problems, the basic flaw is in making the test whether any part of such activities involve violations of any law. That test is much too remote from the intent of the act, which is aimed at concerted activities where the principal activities or objectives constitute violation of criminal laws, not merely regulatory codes.

Administratively, of course, it is probable that the concern of the proposed Office would be more narrowly focused than the scope afforded by this bill. But it is doubtful that Congress really wants to or should grant such discretion to the Attorney General. That definition, moreover, is referred to in other titles in this bill where its application is fundamentally defective.

Title II: This provision is similar to H.R. 5230, and the comments on that bill are applicable here. This provision, however, is not even so well drafted and includes among the State offenses to become Federal crimes those relating to racketeering, a most ambiguous description, and also fails to require a basis for Federal jurisdiction, such as transportation of an article in interstate commerce.

This title does contain an interesting provision which avoids automatic Federal intervention into local offenses. Instead, it authorizes, but does not require, the Attorney General to assist local authorities where they find that the interstate nature of the violations makes it impractical for them to enforce their laws without Federal help. It also gives the Attorney General discretion to enforce this law directly where Federal law enforcement is jeopardized or where a State or local official finds that local authorities fail or refuse to prosecute offenses included here.

Title III: This provision, adding a new section to the Internal Revenue Code, would prohibit tax deductions for amounts expended for rent, wages, and salaries if any Federal statute or statute of the State in which the payments are made constitutes the payments as crimes.

This proposed law apparently intends to change the decision of the Supreme Court in *Commissioner v. Sullivan* (356 U.S. 27 (1958)). In that case the rent and wages paid by a bookmaking establishment in Illinois were held to be deductible expenses, although the business enterprise, the activities of the employees, and the payment of rent for premises used for bookmaking were all illegal under Illinois law. The Court said that such payments were not against clearly defined national policy because Internal Revenue Service regulations permitted deductions for the special Federal excise tax on bookmakers. In any event, the Court said, this business would be singled out for taxation, in effect,

on its gross receipts, rather than net income; and if that were to be done, Congress would have to do it.

While this bill is acceptable as a stopgap measure, it is nevertheless inadequate. Apparently, on the facts of the *Sullivan* case, only the rent would be disallowed as a deduction, since under Illinois law the activities of the employees, not payment of their wages, is a crime and this bill only disallows payments of wages and rent, which payments have themselves been made criminal.

There is nothing to prevent the States, of course, from bringing their own statutes in line with the Federal law. But any Federal attempt to make illegal enterprises less profitable and to eliminate the indirect Federal support of those enterprises through tax advantages also enjoyed by legitimate businesses deserves a more thoroughgoing analysis than this tentative piece of legislation exhibits. Perhaps, if the tax weapon is to be utilized, it should be based on the suggestion of the Supreme Court, to tax illegal enterprises flatly on gross receipts rather than on net income. Once the Government determines, as it seems to do with this proposed law, that its income-tax arm must know what its law-enforcement arm is doing, an entirely new and more pervasive approach to the taxing of illegally obtained revenue is required.

Title IV: This provision is the same as H.R. 3022, and the comments on that bill are applicable here.

Title V: This provision would expand the coverage of chapter 24 of title 15 dealing with regulation and prohibition of activity with respect to gambling devices. The present law prohibits interstate transportation of slot machines and similar devices, except into States or localities which are exempted from the operation of this statute by State legislatures, and requires registration and inventories to be kept by manufacturers and dealers.

The proposed expansion would include all kinds of machines and devices designed primarily for use in gambling, such as roulette wheels, which directly deliver or entitle a person to receive money or anything of value. Parimutuel betting equipment is specifically excluded.

The registration and recordkeeping provisions are also significantly enlarged to include operators as well as manufacturers and dealers, and have been clarified so that they apply only to a person whose business involves devices transported or to be transported in interstate or foreign commerce. That clarification appears to solve the constitutional problem of congressional power to require manufacturers, dealers, and operators to register. The further requirement, however, that such described persons must keep records as to all devices manufactured, delivered or acquired, regardless of whether they will be or have been in interstate commerce, is more doubtful, but may be sufficiently connected with the Federal interest to be valid. See *U.S. v. Five Gambling Devices* (346 U.S. 441 (1953)).

Although carefully drafted in most respects, this bill becomes slipshod when it deals with the problem that requiring a natural person to keep and produce these records which may reveal a crime violates his privilege against self-incrimination, *U.S. v. Ansani* (138 Fed. Supp. 451 (N.D. Ill., E.D., 1955)). The proposed law attempts to permit immunity to be granted where such a person asserts his privilege when required to open his records for inspection. It is questionable, however, whether a person can be prosecuted, as this law contemplates, for failing to maintain records revealing a crime where the law does not grant him immunity at the moment he makes the record or does not automatically give it to him when he asserts his privilege.

Assuming, however, that this is no problem, the proposed immunity provisions still appear to be inadequate. They do not prescribe how immunity is to be conferred and leave the inference that it may even be granted by an FBI agent at the time he comes to look at the records. In addition, while using appropriate language to forbid prosecution for or on account of anything revealed, the bill fails to recite that any evidence produced may not be used against the person in any criminal proceeding.

Title VI: This provision is the same as H.R. 6571, and the comments on that bill are applicable here.

Title VII: This provision is the same as H.R. 3021, and the comments on that bill are applicable here.

Title VIII: This provision is the same as H.R. 468 and 3023, and the comments on those bills are applicable here.

Title IX: This provision contains numerous new sections to be added to title 18 dealing with prohibited and authorized wiretapping.

Outside of eavesdropping on a party line or such interception as is required by telephone company employees in the course of business, the only third-party in-

terceptions permitted would be those (1) by local law enforcement officers under a State statute which requires court approval of the tapping and (2) by Federal officers, according to prescribed procedures involving high responsibility within the Department of Justice plus a court order, but only to obtain evidence of or to prevent "syndicated crime" as defined in title I of this Act.

Because of the loose definition of "syndicated crime" in this bill, the limitations on Federal wiretapping are largely illusory and hardly consistent with the public concern over authorized Federal participation in what many regard as "dirty business" and invasion of privacy. If public acceptance of this weapon against crime, used to advantage by many local prosecutors, is to be obtained, it will have to be done with a more meaningful definition of the crimes for which it may be employed.

With respect to illegal wiretapping, the bill prohibits interception of telephone calls without authorization from both the sender and the recipient. It still fails to clarify, however, whether a recording of the conversation by one of the parties is a crime.

Title X: This provision would add a new section to chapter 73 of title 18, United States Code, which deals with obstruction of the administration of justice. The new section employs language similar to that used in the present law and would prohibit anyone from endeavoring "to intimidate, obstruct or impede any person for the purpose of obstructing or impeding any lawful inquiry or investigation pursuant to this Act by any department or agency."

The proposed law goes considerably further than the existing law, which prohibits interference only with pending Federal judicial proceedings, both civil and criminal, including grand jury investigations (18 U.S.C. 1503), and with pending agency, departmental or congressional hearings (18 U.S.C. 1505). Existing law does not now cover the situation where a person threatens bodily injury to someone if he talks to an FBI agent conducting an investigation, since no judicial proceeding is pending, at least until a complaint is filed (*United States v. Scaratow*, 137 Fed. Supp. 620 (W.D. Pa. 1956)).

The difficulty with this bill is that it is tied to the varied provisions of this particular act, embracing investigations in the area of the unsatisfactory definition of "syndicated crime," myriad local offenses and minor regulatory violations and even the propriety of certain tax deductions. Since the punishment for obstructing the investigation is a fine or imprisonment up to \$5,000 or 5 years, the anomaly would exist of the obstructor's facing a greater punishment than the principal offender he is protecting would face. On the other hand, investigations into a vast body of serious Federal crimes are still left unprotected.

Title XI: This provision is similar to H.R. 6572, and the comments on that bill are applicable here. The type of criminal activity, the intent to carry on which—coupled with interstate travel—is a Federal crime, is called "syndicated criminal activity" and defined in the same excessively broad way that "syndicated crime" is defined in title I of this bill.



## LEGISLATION RELATING TO ORGANIZED CRIME

FRIDAY, MAY 19, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 5 OF THE  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the subcommittee), presiding.

Members present: Representatives Celler (chairman of the subcommittee), Toll, and McCulloch.

Also present: William R. Foley, general counsel; Richard C. Peet and William H. Crabtree, associate counsel.

The CHAIRMAN. The committee will come to order.

Is Mr. Brennan here, and Mr. Nelson?

Mr. NELSON. Yes, sir.

The CHAIRMAN. Mr. Nelson, will you step forward? Thank you.

Mr. NELSON. Should I proceed, Mr. Chairman?

The CHAIRMAN. Yes; go right ahead.

### STATEMENT OF MARTIN M. NELSON, ATTORNEY, ON BEHALF OF BALLY MANUFACTURING CO., CHICAGO, ILL., AND BAILEY WALSH, ESQ., WASHINGTON COUNSEL

Mr. NELSON. I would like to thank the chairman for the opportunity to be heard and especially for your courtesy in advising me of the hearing.

My name is Martin M. Nelson. I am an attorney at law from Chicago, Ill. My associate, Mr. Bailey Walsh collaborated in the preparation of this statement. I represent one client only, the Bally Manufacturing Co. of Chicago, which company is a manufacturer of coin-operated amusement devices. It is a company that employs approximately 2,000 persons.

The CHAIRMAN. What is meant by "coin-operated amusement devices"? Are those pinball machines?

Mr. NELSON. Pinball machines would be included, sir. We make coin-operated pinball machines, suffleboards, bowling games, target games, coin-operated vending machines.

The CHAIRMAN. Do you make jukeboxes, too?

Mr. NELSON. We did, but we discontinued. We make just about everything in the coin-machine field. The company has been in business for 30 years. It is all owned and controlled by one family.

There are no hoodlums connected with this company.

The products that we manufacture are sold throughout the entire world. They are sold in all 50 States. They are sold in Africa, England, and various countries in Europe.

The pinball games, as such, are legal in 48 out of the 50 States. However, pinball games with free plays are not legal in all States. They are legal in 21 States. They are probably legal in 7 States; and there are 21 States where they are illegal.

The CHAIRMAN. You said they are legal in 48-odd States. Now you say they are legal only in a lesser number, as they are played. What does that mean?

Mr. NELSON. Mr. Chairman, the reason for the differentiation is the pinball games, as such, without free plays, are legal in 48 out of the 50 States.

The CHAIRMAN. Without what?

Mr. NELSON. Without free plays.

The CHAIRMAN. Free plays? I don't get that word.

Mr. NELSON. A free play is an opportunity to play the game again if you obtain a certain score. For example, a pinball game is legal in New York State but if it has a free play, it is illegal.

The CHAIRMAN. In other words, the so-called term, "free play" involves, where it is prohibited, an element of gambling. Is that it?

Mr. NELSON. In some States, it would, sir. In other States, it would not.

For example, in our own State in Illinois, our supreme court has held that a free-play game is legal. The free-play games have been legal in the District of Columbia. In my memorandum which I have submitted, I have submitted a list of citations of various court decisions wherein the free-play games have been held legal, and I also make the admission that there are States where the games are held to be illegal and that is one of the reasons why I am here.

I feel that a problem is presented under 5230 and under 6572 because of the conspiracy angle and because of the interstate travel; that the company, taking an order for a game which may be sold in one territory where it is legal would in effect have to police the ultimate destination or the ultimate use of such a machine, if it enters a territory where it could, conceivably be illegal.

The CHAIRMAN. In other words, if you ship one of your pinball machines, say, from Illinois, into a State which has declared that free-play pinball machines are illegal, you might run afoul of one of these proposed bills.

Mr. NELSON. Yes, sir. Actually, it is a matter of company policy. We do not ship games into territories where they are illegal. We sell them to distributors; the distributors very often cover a number of States. The distributors in turn, sell them to operators and the operators place the game upon locations in various States. Very frequently, a distributor has a territory of several States and an operator may have a territory of more than one State. We feel that there would be a duty put upon us to determine the ultimate end use of such a piece of equipment.

The CHAIRMAN. Well, it would not be put upon you, would it? The statute would not cover you as a manufacturer and shipper. If you do not ship a free-play pinball machine into a State that prohibits free play, you would not, as a matter of fact, be held responsible, even under any of these proposed statutes.

Mr. NELSON. Well, it speaks about—I hope that interpretation would be placed upon it.

The CHAIRMAN. I would like to get your view.

Mr. NELSON. But the statute speaks of—

The CHAIRMAN. What are you reading from?

Mr. NELSON. I am reading from 5230 and the statute refers to—

\* \* \* delivers for shipment or transports in interstate commerce, any article \* \* \*.

The CHAIRMAN. Just a minute. Let's get that; 5230?

Mr. NELSON. Yes, sir. On page 2.

The CHAIRMAN. Go ahead.

Mr. NELSON. That, if a manufacturer delivers, for shipment—

The CHAIRMAN. What line on page 2?

Mr. NELSON. Line 6.

\* \* \* or transports in interstate commerce, any article \* \* \*.

The CHAIRMAN. Let's read the whole thing.

If two or more persons conspire to commit any organized crime offense against any of the several States, and one or more of such persons, to effect the object of the conspiracy, delivers for shipment or transports in interstate commerce any article, or deposits in the mail or sends or delivers by mail any letter, package, postal card, or circular, or transmits or causes to be transmitted in interstate commerce any message or communication by wire or radio, or receives any article, letter, package, postal card, circular, message, or communication after such shipment, transportation, sending, delivery, or transmission \* \* \*

shall suffer sanctions.

Mr. NELSON. Well, we place the article in commerce. Subsequently, we might receive communications, either by wire or by mail or by telephone that say as to defects in the machine; methods of wiring or using it, and these inquiries could conceivably in my opinion come from territories where the games are not legal, even though they had been shipped to a territory where the game is legal.

The CHAIRMAN. Well, I think you probably would be nearer your comment if you would point out that the words, "deliver for shipment"—I think those words come nearer to your criticism. In other words, you are manufacturing; you deliver for shipment; you transport.

Mr. NELSON. And subsequently we might have a communication, a communication of any nature, after such shipment or delivery is made and later on, starting with line 21, the bill says:

As used in this section, the term "organized crime offense" means any offense proscribed by the laws of or the common law as recognized in any State relating to gambling \* \* \*—

then enumerating the other items.

The CHAIRMAN. Now do you caution your distributors not to ship your pinball machines, involving free play, into States that make such machines illegal?

Mr. NELSON. Yes, sir. It is a matter of company policy. We are doing our utmost to comply with the laws of all of the States. We find, however, sir, that games which are illegal in a particular State, sometimes through some method, over which we have no control, might arrive in such State. The games are sold and resold, and

they go through many different hands. Our only control is over the original sale.

The CHAIRMAN. Well, now, you make an original sale and the pinball machine with free play comes to rest, say, in a State that does not prohibit such a machine. You have no more control over that machine, have you? The machine is paid for; it has been delivered; you are satisfied with your customer; are you not out of the picture then?

Mr. NELSON. I would think so, sir, I hope that would be the conclusion of the courts. However, not all our situations are that easy. We have a number of States where the status of the law is uncertain.

For example, in our own home State of Illinois, until a few years ago, pinball games were illegal but we lost the case in the circuit court; we lost the case in the appellate court; we reversed it in the supreme court. The supreme court in a 4-to-3 decision held our games were legal; that they possessed in some part, skill. They depended in part, upon the skill of the player and a free play was only something of amusement.

However, in our city of Chicago—let us take that as an example—by ordinance—and I assume we are speaking of the laws of the State, and we also would be speaking of the political subdivisions—by ordinance, free plays are prohibited, so we have an anomalous situation where the State not only says the games are legal, but the State has a State licensing law where a tax is paid.

The CHAIRMAN. What is the percentage of your free play pinball machines? How does that compare to the pinball machines that have not got free play? What is the percentage?

How would you be affected in the event that you are precluded from manufacturing free play pinball machines?

Mr. NELSON. I would only be able to estimate, but I would estimate that probably at least half of the games manufactured possess free plays to some extent and I am not limiting my comments to pinball games. This is true of other types of games, and bowling games often have provision for free plays and the target games, the rifle range games that operate on an electric principle also have provisions for free plays, and, as I said, in the District of Columbia, we have a court of appeals decision which holds—a Federal court of appeals decision—which held those games to be legal but the Federal Government has held that the games are illegal if they possess certain physical characteristics. We have a lawsuit—

The CHAIRMAN. What was that last?

Mr. NELSON. The Internal Revenue Service has held these games to be illegal and subject to a gaming tax if they possess certain physical characteristics, such as an opportunity for deposit of additional coins; what they call a multiple-coin feature, or if there is a means of canceling the free plays. We have a case pending right now in the court of claims here where we are contesting the Government's contention that the games are illegal. The games in question were operated at the Washington Airport and at the Greyhound Station. So we have many situations where we cannot say with complete certainty that this is black or this is white. The games may be legal; they may be illegal. We have a number of States where litigation is pending on this particular subject. So we feel if this type of legis-

lation was passed, in its broad scope, what we could be affected adversely.

Mr. McCULLOCH. Mr. Chairman, I would like to ask a question there.

Is it your opinion, as a good lawyer, the mere transmission of the materials which you manufacture would constitute a conspiracy to commit any organized criminal offense? Where is your overt act that makes you a part of a conspiracy, and if there is no overt act making it a conspiracy on your part, how will you be affected by this legislation?

Mr. NELSON. Well, sir, I feel that in my opinion if a game was manufactured by my client and shipped to a State where the law was clear that such a game was illegal, that we would be part of a conspiracy.

Mr. McCULLOCH. Even though you did not know for what purpose the material was to be used? Even though you had never conferred with, or otherwise had contact with, some other person who was going to use these things for an unlawful purpose? Do you have the opinion that that would be a conspiracy to commit an organized crime?

Mr. NELSON. If that State, if that particular State had a statute or there was a court decision which we are aware of, where the type of game we were shipping would be considered illegal, I would say that the acceptance of the telephone call or the acceptance of the order and the subsequent delivery, and the negotiations thereafter, between two or more persons, would be a conspiracy to violate the laws of that State.

Mr. McCULLOCH. Well, I am very glad to have your opinion on that matter. That is not my offhand, horseback opinion of this section of this bill. I did not draft it but rereading it two or three times would not lead me to that conclusion.

Mr. CRAMER. Will the gentleman yield?

Mr. McCULLOCH. Yes.

Mr. CRAMER. I concur in that. This is similar to a bill which I introduced a few years ago.

Let me ask a question. Are you familiar with H.R. 3024 which I introduced earlier this year, dealing with the Attorney General's recommendations?

Mr. NELSON. Yes.

Mr. CRAMER. Both Attorney General Rogers' and Attorney General Kennedy's recommendations?

Mr. NELSON. Yes, sir.

Mr. CRAMER. Are you familiar with title 5 of the omnibus bill, H.R. 6909?

Mr. NELSON. Not as familiar as I am with 3024; but I believe it is very similar.

Mr. CRAMER. It is exactly the same.

Mr. NELSON. Yes, sir. I am generally familiar with it.

Mr. CRAMER. Should I ask the chairman as to why —

The CHAIRMAN. I beg your pardon?

Mr. CRAMER. He indicates he is familiar with the Attorney General's recommendation, relative to shipping of gambling devices, incorporated in H.R. 3024, which I introduced earlier this year. It

is also title 5 of the omnibus bill and it is in the form of a registration provision. Right?

Mr. NELSON. Yes, sir. Yes, sir.

Mr. CRAMER. Could I ask the chairman as to why that bill is not before the committee and was not considered to be reported upon?

The CHAIRMAN. I have no answer. I will have to check on that.

Mr. CRAMER. What is your attitude concerning the gambling device provision of title 5 that is recommended by the Attorney General—both Attorneys General?

The CHAIRMAN. I don't wish to be called to account before this public meeting. I think as a matter of fact it is very impertinent for the gentleman to ask that question.

Mr. CRAMER. It is not my intention to be impertinent. I was just asking a question of information.

The CHAIRMAN. The question will not be answered. Proceed, Mr. Witness.

Mr. CRAMER. Could he answer the question I asked about his reaction to a registration statute as recommended by both Attorney Generals?

The CHAIRMAN. You are not a member of this subcommittee. You can ask questions as a matter of grace, not as a matter of right.

Mr. CRAMER. I appreciate it. I certainly did not intend any impertinence. I was just asking why the bill which contained the same provisions—

The CHAIRMAN. Respond, Mr. Witness, if you can.

Mr. NELSON. Well, the suggested amendment might, Mr. Cramer, include some of the games that are presently being manufactured by my client. None of the games that we now manufacture come within a prohibition of the so-called Johnson Act. We do not manufacture any device that is illegal insofar as the interstate transportation of slot machines.

Mr. CRAMER. The Johnson Act is limited to slot machines?

Mr. NELSON. Yes.

Mr. CRAMER. This would broaden it to include your machines?

Mr. NELSON. It would take me a good deal of time to give my views. I may say that there is certain language by which there is opened an entirely different scope. It would take me a long time to express it. I did not come prepared in the sense that I have a statement on that bill because I did not think it was before the committee, but I would say that certain phases of that bill would be considered objectionable.

Mr. CRAMER. Even in the form of a registration statute?

Mr. NELSON. I would think so, sir.

Mr. CRAMER. It would not interfere with your shipping of any devices to any State where it is legal, would it?

Mr. NELSON. We would have this problem, if I understand you correctly. We would have to be secure in the hope that the particular State would pass an exemption law similar to the provisions in the present Johnson Act.

Mr. CRAMER. No. The provision specifically excludes its effect in any States where the use of these devices is legal. It is simply a registration statute. It does not permit you—it does not prevent you from shipping in any of those States.

Mr. NELSON. If it pleases the committee, I would like to make a further study. I looked at your bill rather hastily. It was just introduced a few days ago.

Mr. CRAMER. H.R. 3024?

Mr. NELSON. H.R. 3024? I looked at——

Mr. CRAMER. Some time ago.

Mr. NELSON. I looked at that before. If there should be a hearing on it, I would be pleased to prepare and submit a statement. Actually, as of this moment, I came prepared on these two bills.

Mr. CRAMER. Could you request that he do so, Mr. Chairman?

Mr. PEET. May I ask one question?

Could you tell us exactly what type of coin-operated machines your company produces?

Mr. NELSON. I did so earlier, but I will be happy to repeat it. Should I repeat it?

The CHAIRMAN. Repeat those.

Mr. NELSON. All right.

We make virtually everything that is coin operated, including bowling games, shuffle games, target games, pinball games, hockey games, baseball games, basketball games; an infinite variety of coin-operated amusement devices; vending machines; coffee machines; beverage dispensers. In other words, we are in the coin machine business. Over the years, we probably made several hundred different coin-operated mechanisms.

Mr. PEET. Would any of these machines include one-armed bandits?

Mr. NELSON. No, sir.

Mr. PEET. Nothing of that type?

Mr. NELSON. No, sir.

The CHAIRMAN. Would you mind going to your point that you make on page 1, the point you make on page 6 of your statement. First, that you feel that H.R. 6572 is unconstitutional, in the sense that the wording is vague, indefinite, and would be violative of due process.

Secondly, that the bill is unconstitutional in that there is an unlawful delegation of congressional power to the States.

Would you just cover those two points, please?

Mr. NELSON. Well, I think there is a danger that H.R. 6572 is unconstitutional in that there is unlawful delegation of congressional power to the States.

The proposed bill attempts to prohibit or punish persons traveling in interstate or foreign commerce when a State or Federal law relating to certain subject matters is violated, if such interstate travel is, in some vague way, connected with the violation of the law.

Therefore, it seems to me that a political subdivision has the power, in this bill, to define a new offense which would be subject to the sanctions of the Federal law.

I should not belabor this committee with reciting article I, section I, of the Constitution, vesting the powers in Congress, but we are now placed in this situation that, in effect, the Federal Government would be called upon to enforce each and every statute that may be passed by a State; be familiar with each and every common-law deci-

sion; and even be conversant with the ordinances and the determinations of the municipalities, the cities, the villages, and the counties. Are they not part of the laws of the State?

It is clear that Congress could not prescribe the commission of any crime within a State unless it had some relation to a matter within the jurisdiction of Congress.

It is only the use of interstate commerce which gives this bill any pretense at all of being within the Federal jurisdiction.

Then, any State seeking to pass on or to relieve itself of the enforcement problems confronting that State, can pass a law which the Federal Government would have to enforce. We would be faced with a situation that what you do in one State might be perfectly legal; the same offense in another State would make you subject to not only a State prosecution but a Federal prosecution.

It is possible that you could be acquitted—you could be acquitted under the State law and the Federal Government could bring an action. You could be acquitted by the circuit court but there would be another action pending in the district court.

It seems to me the whole scope, the whole theory of enforcement of law is changed and that there would be but little left for the State governments to do; all the responsibility to be passed to the Federal Government because in effect it is a violation of any law of any State and there are instances, as I repeat, where we are not even sure what the statute of a law within the State is.

There are some six States within this Union where the status of the law has changed within the last year. We have had a situation where Tennessee had an adverse bill approved, which would outlaw our games, and shortly thereafter, there was a court decision to the contrary and the legislature repealed that law.

I told you about the Illinois situation where our games were illegal and then, after a long court fight, they were held to be first illegal, then held to be legal.

I mentioned the situation in the District of Columbia where we have a court of appeals decision that is favorable and yet the Federal Government is taking, through the Internal Revenue Service, an entirely different viewpoint.

This situation is multiplied throughout the country and I think we would be placed in the position where we could only do business in those States where the law is so clearly unequivocally in our favor, and where the State law might be doubtful, not knowing what action would be taken by the Federal Government, we would have to abandon that territory.

Mr. TOLL. May I ask, if you ship an item from your place in Chicago, to Las Vegas, Nev., if you would be shipping it through certain States where it is illegal, would you be liable under this law, even though the destination itself is legal—the destination point?

Mr. NELSON. I would think not. I think it is in transit in interstate commerce, and we have not been involved in an unlawful act in Illinois or Nevada. I think that would be a situation that would be most favorable to us.

Mr. TOLL. Suppose you are shipping it to Los Angeles, where it was illegal. Would you be violating the law?

Mr. NELSON. Fortunately, California holds—I don't know about the city of Los Angeles—

Mr. TOLL. I am assuming that Los Angeles considers it illegal and you are shipping from Chicago to Los Angeles. Would you then be violating the law?

Mr. NELSON. Yes.

Mr. TOLL. Your shipment to Las Vegas would not be illegal, but your shipment to Los Angeles would be?

Mr. NELSON. Yes, sir.

Mr. TOLL. How could the Department determine which shipment is legal and which is illegal? How would the Post Office Department determine that?

Mr. NELSON. I suppose by investigatory work.

Mr. PEET. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. PEET. Mr. Nelson, this is a general question.

Mr. NELSON. Yes, sir.

Mr. PEET. Of a policy nature.

Do you feel that there is anything wrong to prohibit the shipment in interstate commerce of machines designed and manufactured primarily for use in connection with gambling?

Mr. NELSON. Well, the law is clear insofar as slot machines are concerned. That case went up to the U.S. Supreme Court. I understand it was partly won and partly lost by the Government. I would say that law has been well established. I do feel—I do feel—there is a real and an obvious distinction between amusement games and gambling devices as such and there is a tremendous difference of opinion, sir, as to whether a device is used for amusement purposes or used for gambling.

Mr. PEET. Assuming that part of it can be cleared up, is there anything wrong with the approach, either prohibiting or requiring registration of machines used primarily for gambling purposes?

Mr. NELSON. Well, it certainly places a burden on the persons who have to register. Don't they become suspect—even may there not be some areas of doubt where perhaps there is some question until the courts have passed upon whether the device is legal?

Mr. PEET. Assuming those gray areas are cleared up.

Mr. NELSON. And the courts have unequivocally held that equipment is a gaming device, then I would say there would be no objections to that situation.

Mr. PEET. And your reservations about these approaches to a registration statute are founded upon the possibility of the gray areas and of the litigation involved therein and the hazard of such gray areas and litigation to a manufacturer such as yourself?

Mr. NELSON. Yes, sir; and also, then, there are over 20 States in the United States which consistently have held these games to be amusement devices.

Mr. PEET. Thank you.

Mr. NELSON. Mr. Chairman, I set forth—

The CHAIRMAN. Will you specifically indicate by pointing out some words and phrases wherein 6572 is so vague as to be unconstitutional?

You call that to our attention in your statement.

Will you pinpoint that statement for us?

Mr. NELSON. Yes, sir. I think the section that worries me principally is not—I am not referring to subparagraph (a) (1) "distribute

the proceeds of any unlawful activity \* \* \*". I have no quarrel with that.

No quarrel with subparagraph (2) "commit any crime of violence to further any unlawful activity \* \* \*".

The CHAIRMAN. What about the words on line 8, page 1: "\* \* \* with intent to \* \* \*"?

Mr. NELSON. Well, intent is a separate study, of course, and certainly the decisions of the States vary greatly as to what constitutes intent and you are going to have, every time a question arises, as to particular States, I assume you would have to be fully familiar with not only the statutes but the court decisions pertaining to what constitutes intent.

The CHAIRMAN. Well, one eminent lawyer yesterday said that would be a sort of thought control; that if a man is in New York, for example, and he has an intention to do some wrong, only in his mind, even if he so expresses it, and goes to another State and does not carry out his intention, the mere fact that he (1) has the intention and (2) that he has traveled across a State line, might constitute a crime.

Mr. NELSON. It could; yes, sir.

The CHAIRMAN. You see, this apparently was an attempt at those who phrased this language, an attempt to get after those hoodlums and racketeers that appeared at Appalachin.

Mr. NELSON. That is the gathering together?

The CHAIRMAN. No doubt, everybody wanted to lay hold of these hoodlums and these outcasts and the law, as now constituted, makes it fairly impossible, and the Court of Appeals of the Second Circuit so held.

What are we going to do on matters of that sort? I will ask you as an attorney, as a representative attorney who is part of our judicial system, how are we going to get after those kinds of things? What are we going to do? Are we going to suffer in silence and let them go on?

Mr. NELSON. No, sir. I am fully in accord—

The CHAIRMAN. That is what this section is intended to get after.

Will you tell us what we should do? Are we to remain helpless under those circumstances?

Mr. NELSON. I don't know if I am capable of advising the committee. I am sure there are many law enforcement officers who could do a much better job than I could.

The CHAIRMAN. It is not a question of law enforcement. It is a question of what Congress can do in the sense that we are told that the present laws are inadequate and the present laws just don't fit. Something must be done.

Mr. NELSON. Well, it still seems to me, Mr. Chairman, that you have to find a man guilty of a specific crime and that good law enforcement would bring the man to trial and he would be convicted.

The CHAIRMAN. Well, now, in that particular case, they had any number of investigations.

Certainly, those racketeers did not assemble at that country home to hold the hands of a sick friend. They undoubtedly went there for some sinister purpose and harm would have come from it had the assembly not been surprised by a peace officer or State trooper who sort of broke it up.

What are we going to do?

Mr. NELSON. I don't have the answer outside of enforcement insofar as a particular crime is concerned. They should be convicted if it is possible but I think that type of shotgun law enforcement would be wrongful. I think you get a Gestapo-like state. I personally, as a lawyer, would not like to see it take place. To me, it would be similar to an antitrust case. Let's take a meeting of any of these people convicted under the electrical antitrust theory and say, what do they get together for, except to determine prices? I don't think that would be good law. I think there has to be some proof of a violation. Everything we ever learned in law school, and everything we learned subsequently, goes on the assumption a man has to be proven guilty, and to attempt to further answer your question on the ambiguities if any, in 6572, the section that bothers me the most is subsection (a) (3) where it reads—

\* \* \* promote, manage, establish \* \* \*.

In other words, "otherwise promote." It seems to try to catch everything.

\* \* \* otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity \* \* \*.

would subsequently relate to and include any business enterprise involving gambling and those words seem so broad to me that there would be no safety; there would be no area of safety until the courts have passed on precisely what "promotion, management, and establishment" is.

The mere getting together to discuss something of this sort, conceivably with intent or no intent, might bring about a violation if the shipment might end in a territory where it is illegal and it is obviously discrimination between the unlawful act in one State, where it could be clearly illegal, and an act in another State where it is legal.

The man would be punished in the one State and not punished in the other. Conceivably, he might be carrying on his conversation and receiving his mail or his communication in a State where it is legal, and yet, if he had not full knowledge of the law in the other States, and if he traveled to and from, he could be subject to a crime.

I have outlined in some detail with the court decisions the five points as to 5230 and the three points as to 6572. They are all part of my statement.

Does the chairman think I should elaborate on those?

The CHAIRMAN. Yes. You have a right to put your statement in the record.

Mr. NELSON. As to my eight constitutional points with the court decisions, the five points on 5230 and the three points on H.R. 6572. If my statement is made part of the record, would that not suffice to cover those points?

The CHAIRMAN. That is perfectly all right. You are going to give us some additional information about the nature of your machines and the laws of the various States?

Mr. NELSON. Yes, sir. Would it be proper to write a letter to you, sir?

The CHAIRMAN. Yes, that is perfectly all right.

Mr. NELSON. And I will outline in that letter the States where the games were legal—where all types of games are legal.

I will outline where some of the games are illegal and I will outline five or six States that are in a state of litigation.

(The prepared statement of Martin M. Nelson is as follows:)

My name is Martin M. Nelson. I am an attorney with offices in Chicago, Ill. I appear here on behalf of Bally Manufacturing Co., 2640 West Belmont Avenue, of Chicago, Ill. Attorney Bailey Walsh, Washington counsel for such company, collaborated in the preparation of this statement. The Bally Co. is a manufacturer among other things of many different kinds of coin-operated amusement devices which are sold to distributors in various parts of the United States.

This bill which has been introduced for the first time is an attempt to deal with the very real problem of organized crime and racketeering. The assistance of the Federal Government to the States in this area of criminal law enforcement has generally been welcomed; however, it must be remembered that any Federal program of assistance must be intelligently designed, workable, and within the powers of Congress as delineated by the Constitution.

It is respectfully submitted that H.R. 6572 would be an unworkable law, subject to many abuses in the hands of enforcement officials and clearly beyond the powers delegated to Congress by the Constitution.

In my written statement to this committee concerning H.R. 5230, I reviewed at some length certain constitutional objections to that bill which I felt should be called to this committee's attention. These objections are pertinent to this bill also. I do not plan in this statement relating to H.R. 6572 to repeat at any great length the legal objections referred to in my statement on H.R. 5230; however, I do wish to at least to mention them briefly and request the committee to refer to my other statement for a fuller exposition of the views I am now expressing.

**I. H.R. 6572 IS UNCONSTITUTIONAL IN THAT THE PROSCRIBED OFFENSES ARE INDEFINITE AND VAGUE AND VIOLATE THE DUE PROCESS CLAUSE**

The often-cited U.S. Supreme Court case of *Conally v. General Construction Co.*, 269 U.S. 385, 70 L. Ed. 322, reaffirmed the standards of certainty and definiteness required by the Constitution in any criminal statute. The Court said, on page 391, "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

This bill, H.R. 6572, purportedly seeks to prohibit travel in aid of racketeering enterprises by making it a crime to travel in any interstate or foreign commerce with intent to, under subsection (a) (3), "otherwise, promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity."

It would appear that a specific criminal intent would have to exist in order for a conviction to be made under this statute, and this normally would be an element of a crime that would have to be proven. In subsection (a) (3) however, the very broadness of the words promote, manage, and establish would include many activities performed by persons not even aware of the fact that they were connected with an unlawful activity as defined in this bill. These broad all inclusive words are even further expanded by the prohibition of any action which would "facilitate the promotion, management, establishment, or carrying on of any unlawful activity." As if the uncertainty in this bill were not already enough, it does not define specifically the "unlawful activity" sought to be punished but attempts to adopt by reference all offenses that are now crimes against the United States involving gambling, liquor, narcotics, prostitution, extortion or bribery and also offenses involving the above subjects which are in violation of the laws of the State where committed.

This definition of unlawful activity discriminates between those who do an act in one State which may not be a crime and those who do the identical act in another State where such activity might be criminal.

It would be necessary for anyone who travels in interstate commerce to be familiar with the whole body of statutory and common law proscriptions of all the States of the Union and the political subdivisions thereof as well as the laws of the United States involving gambling, liquor, narcotics, etc.

The inclusion of the word gambling in the definition of unlawful activity presents a most difficult problem because of the vast differences in statutory

definition and common law interpretations of such word. For example, in some States "free play" pinball games would be subject to the gambling law proscriptions. In many other States free play pinball games are unquestionably legal. Even, however, in those States in which the State law provides that free play devices are valid, local governments sometimes have authority to prohibit such devices. It could be conceivable that a salesman or executive from a company manufacturing these devices, in traveling to a State where the games are actually permitted by State law and in making a sale to a distributor could be charged with a violation of this proposed bill if, in fact, the device sold is subsequently sold to or used by an operator in violation of the State law or the law of a local municipality.

I refer you to my statement on H.R. 5230 for a list of the various court decisions holding free play devices to be legal under particular State and local laws.

This bill is violative of due process of law in that it is not sufficiently explicit in its description of the acts, conduct or conditions required or forbidden, nor does it prescribe the elements of offense with reasonable certainty fixing an ascertainable standard of guilt, making it known to those to whom it is addressed that conduct on their part which will render them liable for its penalties. It is so vague that men of common intelligence would have to guess at its meaning and differ in its application.

**II. H.R. 6572 IS UNCONSTITUTIONAL IN THAT THERE IS AN UNLAWFUL DELEGATION OF CONGRESSIONAL POWER TO THE STATES**

The proposed bill attempts to prohibit or punish persons traveling in interstate or foreign commerce when a State or Federal law relating to certain subject matters is violated, if such interstate travel is, in some vague way, connected with the violation of the law. The mere fact that a State or a political subdivision thereof has the power under this bill to define a new offense which would be subject to the sanctions of Federal law, constitutes a wrongful delegation of the legislative powers of Congress.

Under article 1, section 1 of the Constitution of the United States all legislative power is vested "in a Congress of the United States," and under article 1, section 8, provision is made for the power in Congress to regulate commerce. It is respectfully submitted that this statute constitutes a violation of the power to regulate commerce by delegating to the States the power to define crimes for the commission of which a Federal statute is violated.

**III. H.R. 6572 IS OUTSIDE THE SCOPE OF THE FEDERAL LEGISLATIVE POWERS AND IS UNCONSTITUTIONAL IN ATTEMPTING TO ESTABLISH FEDERAL CONTROL OVER ACTS SOLELY WITHIN THE JURISDICTION OF THE STATES**

The passage of this bill is not necessary to further proscribe the commission of any crimes involving a violation of any Federal law concerned with gambling, liquor, narcotics, prostitution, extortion or bribery since these crimes are already defined and penalties are already fixed for their violation. This bill does not purport to affect the substantive definition of any Federal crimes involving the above subjects which are in violation of the laws of the individual States in effect is an attempt by the Federal Government to impose itself into the law enforcement problems of the various States.

It is clear that Congress could not proscribe the commission of any crime within a State unless it has some relation to a matter within the jurisdiction of Congress, *U.S. v. Fox*, 95 U.S. 670.

It is only the use of interstate commerce which gives this bill any pretense at all of being within the Federal jurisdiction.

This bill if passed into law would be an attempt to establish an extremely dangerous precedent. Congress would thus have in effect appropriated to the Federal Government, jurisdiction over every sphere of human activity which in any way can be touched upon under the guise of the power to regulate interstate and foreign commerce.

It would indeed be a small step away from complete control over the entire law enforcement arm of the various States by the Federal Government if this bill were enacted into law. This bill would in effect make all interstate travel suspect, and dependent upon the opinion of some Federal enforcement officer of the intent with which any interstate travel was made. The bill does not make it a condition of liability that a proceeding be first commenced and successfully concluded with a conviction in a State court against a particular

defendant charged with the violation of a State's law—but rather leaves it up to the Federal Government to determine if its enforcement officers think that the evidence is such that a State crime has been committed, and then bring in independent Federal criminal action. In fact it is even conceivable that an acquittal in the State court of the crime against the State would not prevent the bringing of a separate action by the Federal Government involving the same facts and circumstances, since the "crimes" although consisting of identical elements would be crimes against two separate jurisdictions and subject to the proscriptions of both.

However good and worthy may be the motives in support of the proposed bill, no legislation should be adopted without a careful analysis so that the ultimate law is workable, practical, and within the frame of our Constitution.

H.R. 6572 in its present form is unconstitutional and constitutes a dangerous invasion of States rights. Its sweeping effects can constitute the first step in the destruction of what vestiges remain of our Federal-State system.

The CHAIRMAN. I thank you very much. I just want you to know this committee is certainly not—does not want to place itself in a position of pegging lawful business. We don't want to do anything like that; we want to do everything to protect business enterprises and if these statutes as they are now worded would unduly hurt and improperly hurt, we certainly would want to rectify it in line so as to give you free and ample scope to conduct your business as you have heretofore, provided of course, you respect the laws of the various States.

We want your cooperation. If you can make some suggestions to us, after you go back home, and cogitate over these things, as a good lawyer—and you apparently are a good lawyer—let us have the benefit of your advice and counsel. We desperately need it because these are difficult situations that we are meeting.

Mr. NELSON. I am very appreciative. Thank you for the opportunity to be heard.

The CHAIRMAN. Thank you very much for coming here.

(The statement of Mr. Nelson follows:)

STATEMENT OF MARTIN M. NELSON, ATTORNEY, ON BEHALF OF BALLY MANUFACTURING CO. OF CHICAGO, ILL.

My name is Martin M. Nelson. I am an attorney with offices in Chicago, Ill. I appear here on behalf of Bally Manufacturing Co., 2640 West Belmont Avenue, of Chicago, Ill. Attorney Bailey Walsh, Washington counsel for such company, collaborated in the preparation of this statement. The Bally company is a manufacturer among other things of many different kinds of coin-operated amusement devices which are sold to distributors in various parts of the United States.

H.R. 5230 is unique in the legislative history of the Congress. I am not here to take issue with the objectives of the bill to curb organized crime. It is readily conceded that the Federal Government may appropriately aid the States in curbing organized crime. It is, nevertheless, of great import that any such Federal program must be intelligently designed, workable, and premised on the powers of Congress as delineated by the Constitution.

It is respectfully submitted that H.R. 5230 falls far short of these tests of effective legislation.

I. H.R. 5230 IS UNCONSTITUTIONAL IN THAT AN ACT COMMITTED WITHIN A STATE CANNOT BE MADE AN OFFENSE AGAINST THE UNITED STATES UNLESS IT HAS SOME RELATION TO A POWER OF CONGRESS

The title of the bill states that it is a "bill to punish the use of interstate commerce in furtherance of conspiracies to commit organized crime offenses against any of the several States." The bill does not purport to, nor could it constitutionally, punish for the commission of an "organized crime offense against any of the several States." In *U.S. v. Fox* (95 U.S. 670), the Supreme Court of the United States said: "An act committed within a State, whether for a good or bad

purpose, or whether with an honest or a criminal intent, cannot be made an offense against the United States unless it has some relation to the execution of a power of Congress or to some matter within the jurisdiction of the United States." Clearly, if the U.S. Government cannot punish the commission of a crime itself within a State, it cannot punish a conspiracy to commit such a crime.

It is basic to constitutional law that the jurisdiction of the Federal Government stems from its authority in interstate commerce. Under the provisions of the bill, before the Federal Government has any jurisdiction, interstate commerce has to be used, obviously, by a coconspirator to effect the object of the conspiracy; i.e., commission of the "organized crime offense."

The question which then arises is: Under whose law, the particular State's or the Federal Government's, does a person determine whether or not a particular combination is, or is not, a conspiracy? Even though the statute is a Federal one, the essential element of any punishment under it must be the conspiracy to violate a State law; and the factor, if any, that gives the Federal Government jurisdiction is the use of interstate commerce to effect the object of the conspiracy.

**II. H.R. 5230 IS UNCONSTITUTIONAL IN THAT THE PROSCRIBED OFFENSE IS INDEFINITE AND VAGUE AND VIOLATES THE DUE PROCESS CLAUSE**

In general, a criminal statute to be valid must be so clearly and definitely expressed that an ordinary man can determine in advance whether his contemplated act is within or without the law. If deviation from a standard is prohibited, the standard must be definitely fixed (*U.S. v. Armstrong*, D.C. Ind. 1920; 265 F. 683). A criminal statute must define the crime denounced; otherwise it will be unconstitutional as depriving one of life, liberty, or property without due process of law (*U.S. v. Peace Information Center*, 97 F. Supp. 255; *F. & A. Ice Cream Co. v. Arden Farms Co.*, 98 F. Supp. 180).

As the U.S. Supreme Court observed in *Connally v. General Construction Co.* (269 U.S. 385, 391, 70 L. ed. 322, 328), "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

In H.R. 5230 an "organized crime offense" is defined as any offense proscribed by any State relating to gambling, narcotics, intoxicating liquors, prostitution, criminal fraud, or false pretenses, or murder, maiming, or assault.

(a) None of these offenses necessarily requires the participation of more than one offender; nor is the bill limited in application to only those cases in which one or more persons are to participate in the offense. Thus, contrary to the title of the bill, it does not relate only to "organized crime." It applies only to conspiracies to commit crimes, which may or may not be "organized." This lends uncertainty to the ascertainment of the proscribed act.

(b) The bill would leave to the laws of the several States the determination of whether or not a particular act is or is not an "offense \* \* \* relating to \* \* \*" the named subjects. This is objectionable for several reasons:

It discriminates between those who do an act in one State and those who do the identical act in another State.

It lacks certainty and clarity. One must be familiar with the whole body of statutory and common law proscriptions of all the States of the Union and probably even in the political subdivisions thereof.

There could be no crime unless it was punishable by the particular State, and in order to determine when a particular combination constitutes a prohibited conspiracy, the law of the State would have to be examined, rather than the definitive statement of the crime in the proposed law.

The definition of conspiracy as used by the Federal courts in determining when a particular set of facts constitutes a conspiracy to violate a Federal statute would be of no importance. There thus exists a vagueness and uncertainty and complete lack of standard as to what constitutes the proscribed act.

The term "organized crime offense," as relating to many different subject matters, and particularly as to gambling, presents a most difficult problem because of the vast differences in statutory definitions and common law interpretations. For example, in some States free-play pinball games would be subject to gambling definitions and the use thereof, etc., would be punishable by imprisonment in the penitentiary. In many other States free plays are unquestionably legal. Therefore, a manufacturer of free-play pinball games, making use of interstate commerce, would have to be completely familiar with all existing

laws and court decisions pertaining to gambling in the 50 States before he would know whether an "organized crime offense" has been committed.

I specifically call to your attention the following cases in which courts have determined that a free-play pinball game is not a gaming device:

- Washington Coin Machine Assn. v. Callahan*, 142 F. 2d 97 (C.A., D.C.).  
*Chicago Patent Corporation v. Genco, Inc.*, 124 F. 2d 725 (C.C.A. 7th).  
*Davies v. Mills Novelty Co.*, 70 F. 2d 424 (C.C.A. 8th).  
*Mills Novelty Co. v. Farrell*, 64 F. 2d 476 (C.C.A. 2d).  
*State v. Waite*, 156 Kan. 143, 131 P. 2d 708.  
*State v. One Bally Coney Island No. 21011 Gaming Table*, 174 Kan. 757, 258 P. 2d 225.  
*State v. Betti*, 23 N.J. Misc. 169, 42 A. 2d 640.  
*Overby v. Oklahoma City*, 46 Okla. Cr. 52, 267, Pac. 796.  
*In re Wigton*, 151 Pa. Super. 337, 30 A. 2d 252.  
*Commonwealth v. Kling*, 140 Pa. Super. 68, 13 A. 2d 104.  
*State v. One "Jack and Jill" Pinball Machine*, 224 S.W. 2d 854 (Mo. App.).  
*Crystal Amusement Corporation v. Northrop*, 19 Conn. Supp. 498, 118 A. 2d 467.  
*McNeice v. City of Minneapolis* (1957) 84 N.W. 2d 232.  
*Stevenson et al. v. Salt Lake City*, 7 Utah 2d 28, 317 P. 2d 597.  
*Sharpenstein v. Hughes*, 162 A.C.A. 406, July 26, 1958, certiorari denied by State supreme court on September 24, 1958.  
*People v. One Mechanical Device*, 11 Ill. 2d 151, 142 N.E. 2d 98 (1957).  
*Masters v. Kansas City, Mo.* 294 S.W. 2d 366.  
*State v. Gulgus*, 347 P. 2d 592 (Supreme Court of Oregon 1959).  
*McKee v. Foster*, 347 P. 2d 585 (Supreme Court of Oregon 1959).

I must add that there are decisions contrary to those cited above and in some instances there is even a division of authority within a State by reason of city ordinances that might prohibit or restrict use even though the State law so permits or even licenses such use.

A manufacturer of amusement games in Illinois who ships games that are legal in Illinois and legal in many or most other States would thus be confronted with the seemingly impossible burden of tracing such shipment to the ultimate user to determine in advance what such ultimate use might be so as to forestall the possibility of such shipment or any one device being eventually used in a State where the definition of gambling would make such use a crime. Suppose a shipment is made by a manufacturer to a distributor in a State wherein the use is legal, and the manufacturer has knowledge of or is cognizant of the fact that such distributor does business in several States, including States wherein the use might conceivably be illegal, the manufacturer is confronted with the burden of determining what the eventual end use might be made by the person at the end of a long chain of transfers.

Thus, a manufacturer's salesman would be hazarding the possibility of being a party to a conspiracy by the mere acceptance of a phone call placing an order for the shipment of games if such shipment could in any way at some future date enter a State where the same might be used in violation of the laws of such State. A tremendous burden would be placed upon every manufacturing corporation or any other entity to scrutinize in every detail each and every order given to its salesman or representative. Despite the most intensive inquiry as to ultimate use, untold hazards would still exist in shipping any device, however innocuous, to any part of the United States. It could be destructive of free commerce between the States.

The proposed bill is ambiguous in that one must be able to determine whether a "State law relates to" a given subject. A corporate officer filing a false financial statement through the mails with a State agency for a company located in any State and doing business only in that State could conceivably come within the scope of the proposed law. What, one can ask, does that have to do with "organized crimes"?

Thus, the definition of "organized crime offense" is violative of due process of law in that it is not sufficiently explicit in its description of the acts, conducts, or conditions required or forbidden, nor does it prescribe the elements of offense with reasonable certainty, fixing an ascertainable standard of guilt, making known to those to whom it is addressed that conduct on their part which will render them liable for its penalties. It is so vague that men of common intelligence would have to guess at its meaning and differ in its application,

(16 C.J.S., section 580, pps. 1173 and 1174; *Kay v. U.S.*, N.Y. 58 S. Ct. 468, 303 U.S. 1, 82 L. Ed 607, vacating 89 F. 2d 19, certiorari granted *Kay v. U.S.* 57 S. Ct. 943, 301 U.S. 679, 81 L. Ed. 1338).

### III. H.R. 5230 IS UNCONSTITUTIONAL IN THAT THERE IS AN UNLAWFUL DELEGATION OF CONGRESSIONAL POWER OF CONGRESS TO THE STATES

The proposed bill is effective, if at all, only in the respect that a conspiracy is formulated to violate a State law. The proposed bill would be but an empty gesture except as it is related to criminal laws of the various States. Thus, it is for the State to legislate a proscribed act before a conspiracy to violate the proposed bill could take effect. That, it is respectfully submitted, constitutes a wrongful delegation of congressional legislative powers.

Under article I, section 1 of the Constitution of the United States, all legislative power is vested "in a Congress of the United States," and under article I, section 8, provision is made for the power in Congress to regulate commerce. It is respectfully submitted that this statute constitutes a violation of the power to regulate commerce by delegating to the State legislatures the power to spell out crimes for the commission of which, to conspire becomes a Federal offense.

### IV. H.R. 5230 IS OUTSIDE THE SCOPE OF THE FEDERAL LEGISLATIVE POWERS

The bill does not seek to punish (a) the offense against the State, (b) the formation of a conspiracy to commit such an offense, or even (c) an act in furtherance of such a conspiracy. It merely proscribes the transportation in interstate commerce of the use of the mails or of interstate means of communication in furtherance of such conspiracy.

There is grave doubt as to whether the foregoing is within the scope of Federal legislative powers. Certainly it is clear that Congress could not proscribe the specific offenses which are named; nor can Congress proscribe the formation of a conspiracy to commit such offenses; nor can Congress proscribe all acts in furtherance of such conspiracy. Thus, it is only the use of interstate commerce and the use of the mails which gives the bill any pretense at all of being within Federal jurisdiction.

But this is not enough. The ultimate purpose—curbing organized crime against the States—is too far removed from the constitutional basis of our Federal system. The whole philosophy of the bill and its scheme of operation are in conflict with the fundamental principles of the U.S. Constitution. In fact, it represents an attempt to usurp powers which have always been left exclusively with the States. It is contrary to the revived concept of our federalism, that the control of intrastate crime is basically a function of the States, and that that area ought properly be excluded from Federal jurisdiction.

The bill would establish an extremely dangerous precedent. Observe what it really means: it stands for the principle that nothing is beyond the scope of the Federal legislative powers over interstate commerce, the postal service, and other communications. Were H.R. 5230 to become law, Congress would have in effect appropriated to the Federal Government jurisdiction over every sphere of human activity, which in any way can be touched upon through those specific powers. The consequences of embarking on this type of legislation are far reaching and sweeping, exceeding in one fell swoop every attempted or executed extension of Federal power. It is but a short step from the proposed bill to a program of regulating every business office which deals in more than one State, or the operation of every private person who uses the mails.

Not too farfetched is the ridiculous, yet real, possibility that under the bill a simple poker game scheduled to take place in some person's private home becomes a Federal offense the moment an invitation is posted in the mails, if that kind of offense is violative of State law. Common prostitution may become the concern of the Federal courts if an innocent "date" is made by male and female across State lines by telephone.

Note also the fact that all of the "conspirators" become equally liable to punishment if any one of them engages in a prohibited act. It is true, of course, that several conspirators are often thus punished for the affirmative act of only one of them, but this is justified on the ground that their participation in the conspiracy was itself an offense against the Government. This is not the case here—for here mere passive participation in the conspiracy is not, and could not be, declared illegal.

## V. THE PENALTIES PROVIDED IN H.R. 5230 ARE UNIQUE AND WITHOUT REASON

The bill proposes a unique measure of punishment. Thus, conviction of a violation of the act may result in: (a) \$10,000 fine, or 5 years, or both; or (b) if a lesser penalty is fixed by State law, then such penalty will control; or (c) by death, life imprisonment, or 10 years under certain circumstances. There is no valid reason for using such a formula. If the crime is in reality one against the United States, then the penalty ought to be the same, regardless of where it is committed or what the objective may be. But if it is argued that the penalty set by the State is a proper measure, then there is no reason for fixing the maximum penalty as is done here. In this respect, too, the bill proposes an invalid delegation of the sovereign powers of the legislature. Just as the power to fix the penalty cannot be delegated to the executive branch of the Government, so it cannot be delegated to the States.

However good and worthy may be the motives in support of the proposed bill, no legislation should be adopted without a careful analysis so that the ultimate law is workable, practical, and within the frame of our Constitution.

H.R. 5230 in its present form is unconstitutional, and constitutes dangerous invasion of States rights. Its sweeping effects can constitute the first step in the destruction of what vestiges remain of our Federal-State system.

LAW OFFICES,  
TIMOTHY J. MURTAUGH,  
MARTIN M. NELSON,  
Chicago, Ill., May 22, 1961.

Re H.R. 5230, H.R. 6572.

Congressman EMANUEL CELLER,  
*Chairman of the Committee on the Judiciary,*  
*House of Representatives, Washington, D.C.*

DEAR CHAIRMAN: Pursuant to the suggestion that was made at the time of my appearance with reference to the above bills on Friday, May 19, 1961, before House Subcommittee No. 5 of the Judiciary, I call to your attention that pinball games without free play features are legal in all States except Alabama and North Carolina. Pinball games which award free plays for a successful operation are legal in Washington, D.C., and the following States:

California	Maryland (in most counties)
Connecticut	Massachusetts
Illinois	Minnesota
Indiana (If mechanically conferred and unrecorded)	Mississippi
Kansas	Missouri
Kentucky	Nevada
Louisiana	Oregon
Maine	South Carolina
	Tennessee

and are illegal in the following States:

Alabama	Nebraska	Oklahoma
Florida	New Jersey	Pennsylvania
Hawaii	New Mexico	South Dakota
Idaho	New York	Texas
Iowa	North Carolina	Vermont
Michigan	North Dakota	Virginia
Montana	Ohio	Wisconsin

In the following eight States free play pinball games are probably legal. However, there are no definitive court decisions construing the particular State statutes nor are there any State statutes either expressly authorizing or prohibiting such games.

Arkansas	New Hampshire	West Virginia
Colorado	Utah	Alaska
Delaware	Washington	

In the following four States free play pinball games are probably illegal, although there are no definitive court decisions construing the particular State

statutes nor are there any State statutes either expressly authorizing or prohibiting such games.

Arizona  
Georgia

Rhode Island  
Wyoming

I also mentioned at the time of my appearance before your committee that there is sometimes a division of authority within a State because cities, villages, towns, and counties frequently have the authority to prohibit or regulate pinball games.

Hoping the above information will help clarify the status of pinball games within the United States and thanking you again for the opportunity to appear before your committee, I am,

Yours very truly,

MARTIN M. NELSON.

P.S. An extra copy of the above is also enclosed for the convenience of Mr. William Foley, counsel for the committee.

The CHAIRMAN. Our next witness is Mr. John Brennan, vice president of Thoroughbred Racing Associations.

**STATEMENT OF JOHN BRENNAN, VICE PRESIDENT, THOROUGH-  
BRED RACING PROTECTIVE BUREAU, INC.**

Mr. BRENNAN. Mr. Chairman, my name is John L. Brennan, vice president of Thoroughbred Racing Protective Bureau, Inc.

I am accompanied by Devereux Milburn of the law firm of Carter, Ledyard & Milburn.

The CHAIRMAN. Will you tell us exactly what the Thoroughbred Racing Associations really is?

Mr. BRENNAN. Yes, sir. The function of the Thoroughbred Racing Associations of the United States is covered in my statement, I think—if you wish me to read it, Mr. Chairman?

The CHAIRMAN. You might read it, yes.

Mr. BRENNAN. This is regarding House of Representatives bill 6573 which I believe is now 7039, amending chapter 50 of title 18, United States Code, with respect to the transmission of bets, wagers, and related information.

Thoroughbred Racing Associations of the United States, Inc., hereinafter referred to as TRA, is a New York membership corporation, organized in 1942, with its office at 220 East 42d Street, New York, N.Y. Its membership consists of 46 thoroughbred racetracks in the United States and Canada. TRA was formed as a trade association for the purpose of improving the sport of thoroughbred racing in this country and Canada, and inspiring public confidence in its integrity.

The CHAIRMAN. It has nothing to do with trotters?

Mr. BRENNAN. We have nothing to do with trotters, no, sir, Mr. Chairman.

Mr. TOLL. How about harness races?

The CHAIRMAN. That is the same thing.

Mr. BRENNAN. It has nothing to do with harness races; it has nothing to do with dogs.

The CHAIRMAN. What do you actually do with reference to these various tracks that are members of your association? Do you supervise the conduct of the jockey, the trainers, and so on?

Mr. BRENNAN. Well, the TRA is the same as a trade association, just like the NAM, or the U.S. Chamber of Commerce or a group of printing equipment manufacturers, and they banded together in 1942, to further their business interests as a sound investment.

In 1946, they organized the Thoroughbred Racing Protective Bureau, Inc., as an investigatory body, to investigate all allegations of wrongdoing and malpractice in the sport and at that time, there were allegations of jockey rings and stimulations and ringer cases and such.

The CHAIRMAN. Do you mean stimulation when the horse is given a drug?

Mr. BRENNAN. When a horse would be given a drug, yes, sir.

The CHAIRMAN. Last week, there were three cases of horses being drugged in one track. Are you aware of that?

Mr. BRENNAN. Very well aware of it, Mr. Chairman.

The CHAIRMAN. What happened in that case? Did you investigate that?

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. What did you find?

Mr. BRENNAN. Well, the reports were turned over to the stewards and to the racing commission in New York and one of the three cases involving Hirsch Jacobs, trainer, no evidence was developed to determine why the drug Coramine was found in the saliva of that particular horse.

And, there was no evidence found that Hirsch Jacobs had been negligent in his care of the horse. He had sufficient personnel.

In the second case, a similar situation developed with respect to Clyde Trout, trainer.

In the third case, involving Danny Perlsweig, just recently, the drug was Butazolidin. The first two cases were Coramine. In the third case, Perlsweig admitted his veterinarian, Dr. Colando, had injected the horse some 50-odd hours before shipping the horse from Garden State to Aqueduct to race and this particular Butazolidin, which is a very controversial drug, had showed up in the analysis of the horse's urine and saliva as a positive.

He was ruled off for 60 days by the stewards. He is appealing his case to the racing commission. That is the status of the case as of now.

The CHAIRMAN. That is part of your duties, to supervise and police the operations of the track?

Mr. BRENNAN. Yes, Mr. Chairman.

In 1946, TRA entered into a contract with Thoroughbred Racing Protective Bureau, Inc., hereinafter referred to as TRPB, a New York stock corporation whose principal office is also located at 220 East 42d Street, New York, N.Y. TRPB is an investigatory body and its business is conducted for the most part by former FBI agents. The primary function of TRPB is the elimination of corruption from the sport of thoroughbred racing and the exclusion of wrongdoers of all kinds from participation in the sport in any capacity whatsoever.

TRPB has always directed much of its program against bookmaking in thoroughbred racing. It has been successful in barring bookmakers from the racetrack but it has found that off-track bookmaking is to a great extent beyond its control. Both TRA and TRPB, therefore, welcome any bill such as H.R. 6573 which is directed against

bookmaking and wire services which illegally supply bookmakers with betting information. Aside from any other consideration, it is only good business sense that such should be the case. Annually, a great deal of money passes through the hands of off-course bookmakers which would otherwise find its way to the legal parimutuel machines at the various racetracks.

This committee may feel assured that our organizations are wholeheartedly behind the purpose of this bill. Twenty-five racing States derive large revenues from their participation in the wagering pools on horseracing and insist upon strict supervision and control for the purpose of keeping the sport free of undesirable persons and practices. No other sport is so closely supervised and public appreciation of the results achieved is clearly demonstrated in the increases in public patronage which has placed horseracing in the front of all other spectator sports in attendance.

It must be remembered, however, that attendance is the lifeblood of the thoroughbred race tracks and that in order to maintain it at a high level, prospective patrons must be given adequate information as to the program to be offered at the track. They are entitled to know in advance about such things as scratches, jockey changes, weights and favorites before making up their minds whether or not to attend the races on any given day. Advance publicity has persuaded many a person to go to the track and millions of dollars are spent each year by our member tracks' public relations departments for just this purpose. Customarily, much of the necessary information and data is carried daily as sporting news by the great wire services of the country.

In our opinion, subsection (b) of H.R. 7039 does not safeguard adequately the dissemination of legitimate racing news. The term "news reporting" is indefinite and capable of various interpretations. Ultimately, the courts would be required to determine the difference between "news reporting" and the activities prohibited by subsection (a). To obviate the necessity of resorting to the courts, definite standards should be established in the bill. On behalf of TRA, we submit the following and suggest that substantially similar language be substituted as subsection (b) of section 1084 of H.R. 7039:

Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information concerning sporting events or contests by representatives, agents, and employees of newspapers and other periodical publications which qualify for second-class mailing privileges as provided in United States Code Annotated, sections 4351-4355, or by representatives, agents, and employees of a standard broadcast station as defined in title 47, Code of Federal Regulations, section 3, paragraph 1, provided such information is transmitted over the wire communication facility of a common carrier, as defined in title 47, United States Code Annotated, section 153(h), subject to the jurisdiction of the Federal Communications Commission.

That is our statement, Mr. Chairman.

The CHAIRMAN. What do you mean by periodic publications? Does that mean like the Armstrong publications, so-called dope sheets?

Mr. BRENNAN. Periodical publications?

The CHAIRMAN. Yes.

Mr. BRENNAN. Well, I would refer you, Mr. Chairman, to the section to which we refer, 4352, and I will read it:

Generally, a mailable periodical publication is entitled to be entered and mailed as second class mail if it—

- (1) is regularly issued at stated intervals, as frequently as four times a year, and bears a date of issuance numbered consecutively;
- (2) is issued from a known office of publication;
- (3) is formed of printed sheets;
- (4) is originated and published for the dissemination of information of a public character or devoted to literature, the sciences, arts, or a special industry, or
- (5) has a legitimate list of subscribers.

The CHAIRMAN. Name some of those publications for the record. Name some of them.

Mr. BRENNAN. Which would come within the purview of this particular subsection, Mr. Chairman?

The CHAIRMAN. For the record, give us some.

Mr. BRENNAN. I would imagine all of the magazines, like the Saturday Evening Post; Colliers, which is out of business, Life Magazine, and any newspaper.

The CHAIRMAN. Well, I am referring to the other so-called dope sheets, like Armstrong. Would that be covered?

Mr. BRENNAN. That I do not know, Mr. Chairman, but I would assume so.

The CHAIRMAN. If you don't know, then we are not very definite in using this terminology.

Mr. BRENNAN. I would say Armstrong would probably be covered. It certainly covers these.

The CHAIRMAN. When you go to a race——

Mr. BRENNAN. However, if the post office did not give the second-class mailing privileges, it would not be covered.

Mr. FOLEY. Do you know whether Armstrong has second-class mailing privileges?

Mr. BRENNAN. That I don't know.

Mr. FOLEY. How about the Morning Telegraph?

Mr. BRENNAN. The Morning Telegraph—yes, sir.

Mr. FOLEY. They have second-class mailing privilege?

Mr. BRENNAN. Will you, for the purpose of the record, and to aid us, give us subsequently, a list of the publications which you know of which are found in racetracks, that would come within the definition of periodical publications? Will you do that for us?

Mr. BRENNAN. I will be very glad to, Mr. Chairman.

(The information referred to follows:)

THOROUGHbred RACING PROTECTIVE BUREAU,  
New York, N.Y., June 1, 1961.

Mr. WILLIAM FOLEY,  
General Counsel, House Judiciary Committee,  
House Office Building, Washington, D.C.

DEAR BILL: I just wanted to thank you for your courtesy and cooperation in arranging our testimony as rapidly as you could, and I was sorry I did not have an opportunity to thank you personally after my appearance before the committee.

As you recall, Chairman Celler requested us to attempt to obtain some idea of the publications which would qualify under the second-class mailing provision of the postal department, which was one of our recommendations as presented to the committee. The specific question was asked as to whether Armstrong scratch sheet, officially known as the Armstrong Daily News Review, would be permitted under the second-class provision of the postal laws and the answer to this is in the affirmative. This publication is entered as second-class mailable matter. The same situation holds true for the Morning Telegraph and the Daily Racing Form.

As was mentioned in my testimony, the usual magazines such as Life, Time, etc., come under this same second-class mailing provision.

I hope the above will be of some help to the committee.

With kindest personal regards,

Sincerely,

JOHN L. BRENNAN.

The CHAIRMAN. Now, when you go to a racetrack, you are handed all kinds of handbills. Now, you buy them. Are those periodical publications? They contain all manner and kinds of information about the horses, the jockeys, and so forth.

Would they be called periodical publications?

Mr. BRENNAN. No, sir. If you are referring to the tout sheets, tipster sheets.

The CHAIRMAN. Yes.

Mr. BRENNAN. They don't—they contain very little information, Mr. Chairman, other than selections. In other words, the first and second horses, in each of the individual races. They carry no information about jockeys or the condition of the horses or anything like that.

Mr. FOLEY. How about this tout service, though, where you subscribe. You get it regularly.

Mr. BRENNAN. Well that is, again, a different situation. We don't have anything to do with that. If there is any evidence of fraud, that would be a violation of the mail fraud statute, but if they do give more than one horse in one race then, of course, they have a possible fraud case.

The CHAIRMAN. Now, you go on to say in your suggested language—

\* \* \* or by representatives, agents, and employees of the standard broadcast station as defined in title 47, Code of Federal Regulations, section 3, subdivision 1, provided such information is transmitted over the wire communication facility of a common carrier, as defined \* \* \*

and so on—

\* \* \* subject to the jurisdiction of the Federal Communications Commission.

Explain that, if you will.

Mr. BRENNAN. Well, the standard broadcast station, Mr. Chairman, means a broadcasting station licensed for the transmission of radio, telephone, emissions primarily intended to be received by the general public and operated on a channel in the band 535 to 1605 kilocycles.

The CHAIRMAN. Those are radio stations, aren't they?

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. Apparently the bill as originally drafted would not affect radio stations giving forth that material and information.

Mr. BRENNAN. Mr. Chairman, we realize that. This is just so the information can be telephoned into the news services—United Press International, AP, or any of those, and go on the wire services.

The CHAIRMAN. That is where the sportswriter of a paper telephones news of a race to his newspaper?

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. He uses the wires for that purpose. Then he would be exempt.

Mr. BRENNAN. Yes, sir.

Mr. FOLEY. Was this same or similar language adopted in New York recently, or was it rejected?

Mr. BRENNAN. No, sir. District Attorney O'Connor drew up something—I think I left a copy—but it isn't the same thing.

Mr. FOLEY. It is not the same thing? I wasn't sure.

Mr. BRENNAN. I think that still has the problem of standards in it, too. In other words, it isn't sufficiently definitive to reach some of the problems which this committee is trying to reach.

The CHAIRMAN. You approve the bill with these changes?

Mr. BRENNAN. Yes, sir, Mr. Chairman. All we want to do is be sure it doesn't interfere with the legitimate reporting of racing news. We certainly don't want this other—

The CHAIRMAN. Wouldn't the legitimate reporting, so called, which is exempt from sanctions, give you the same kind of information that the illegitimate facilities would give you, and give it to you just as quickly?

Mr. BRENNAN. Certainly.

The CHAIRMAN. What is the reason for exempting one and putting the cloak of disapproval on the other?

Mr. BRENNAN. The person who furnishes the information illegally is furnishing it to bookmakers or people of that type.

Mr. FOLEY. Actually, the main difference is the fact that the running of the race and the gambling on it are legal in the case you cited, whereas the gambling in the other case is illegal.

Mr. BRENNAN. Very true.

The CHAIRMAN. Any questions?

Mr. PEET. One question, Mr. Chairman. Mr. Brennan, under your proposed language for H.R. 6573, relating to second-class mailing privileges, would it not be possible for individuals to justify the receipt of wire communications, relating to gambling information, by the issuance, on a periodical basis, say three or four times a year, of some sort of newsletter of a public nature relating to a sporting event or racing?

Mr. BRENNAN. Yes; I would say so, Mr. Counsel. I would say that this is probably the third or fourth time this type of legislation has tried to be introduced with teeth in it to be effective. It is not very easy, as the committee knows, to phrase legislation which will reach your objective and still not interfere with legitimate reporting of news.

Mr. PEET. And you admit the weakness of this definition on that basis also?

Mr. BRENNAN. Yes. In my opinion I don't think it is going to eliminate all of the abuses; no, sir.

Mr. PEET. Would this—for want of a better word—"loophole" enable practically anyone who wanted to, and who could justify the securing of a second-class mailing provision, to get around the prohibition of the statute?

The CHAIRMAN. Thank you, Mr. Brennan. Will you supply that information?

Mr. BRENNAN. Yes; I will. Mr. Chairman, I would like to make one other comment, if it is permissible to do so, on H.R. 6571 on wagering paraphernalia—interstate transportation of wagering paraphernalia—and I would like to speak for the TRA—that is, the Thoroughbred Racing Association—and point out that under the provisions of

the present bill this would prohibit the transportation in interstate commerce of totalizer equipment in the 25 States where racing is legalized.

That is portable equipment that moves from one State to the other. When racing stops at Garden State, for instance, and they move to Monmouth Park and then to Atlantic City, that equipment is physically moved. I think you should have an exception, if I may suggest, if you please, sir, to eliminate or make an exception on the pari-mutuel wagering equipment which certainly would come within the purview of the existing proposed bill.

The CHAIRMAN. Yes, I think it would; in other words, to enable you to move it from one track to another.

Mr. BRENNAN. Yes, sir.

Mr. FOLEY. Is that manufactured solely by the one company, American Totalisator?

Mr. BRENNAN. Yes, sir; it is manufactured in this country. There are two other competitors, but on a very, very minor scale, Mr. Counsel.

Mr. PEET. Mr. Brennan, I asked you a question before and I didn't hear the answer—if the answer was given.

Mr. BRENNAN. Whether this "loophole"—as you phrase it—would be sufficiently broad to permit someone to print a periodical four times a year.

Mr. PEET. In other words, would that defeat the prohibition in itself?

Mr. BRENNAN. I would certainly say that would be approximate possibility—not even a remote possibility.

Mr. PEET. Thank you.

Mr. CRAMER. May I ask a question?

The CHAIRMAN. Yes.

Mr. CRAMER. Isn't it true that H.R. 6573 as presently drafted doesn't deal with the subject of newspapers or mails? Therefore your definition as proposed wouldn't have proper application.

Mr. BRENNAN. H.R. 6573 actually refers to wire communications facilities.

Mr. CRAMER. That is all it refers to.

Mr. BRENNAN. That's true.

Mr. CRAMER. That is the only thing contained in the prohibition. So why would you need an exception, including mail and newspapers?

Mr. FOLEY. News reporting.

The CHAIRMAN. He wants to define "news reporting."

Mr. FOLEY. A sports editor covering a race calls it in to his office.

Mr. BRENNAN. If the telephone or the teletypewriter are used to furnish information to the New York Herald-Tribune or the Washington Post from Laurel, or somewhere like that, it would come within the purview in our judgment.

Mr. CRAMER. The same requirement would be concerned in mailing.

Mr. BRENNAN. I would assume so.

The CHAIRMAN. In other words, it is really for news reporting. He is using the wires for the purposes of reporting.

Mr. BRENNAN. Yes, sir.

The CHAIRMAN. Thank you very much.

Mr. BRENNAN. Thank you, Mr. Chairman.

The CHAIRMAN. We will copy into the record at this point a statement on behalf of the U.S. Independent Telephone Association by Bradford Ross, counsel.

(The statement of Mr. Ross is as follows:)

My name is Bradford Ross, and I appear on behalf of U.S. Independent Telephone Association, to which I will sometimes refer as USITA.

It is the traditional desire of the managements of independent telephone companies to cooperate at all times with law enforcement authorities. As public service enterprises, subject to regulation universally, and dependent upon public good will for their prosperity, independent companies are as much opposed to gambling as anybody could be. Nevertheless, efforts to control gambling should neither unjustly place these public service enterprises in the position of seeking to avoid criminal sanctions at the expense of subjecting themselves to regulatory criticism or civil damages, nor force them to act as policemen and informants.

It is feared that H.R. 6573<sup>1</sup> would place telephone companies in the first-mentioned dilemma and that H.R. 3022<sup>2</sup> would have the second adverse effect mentioned above.

USITA is a nonprofit trade association organized in 1897 and incorporated under the laws of the State of Illinois in 1915 for the purpose of promoting the general welfare of the individual firms and corporations engaged in providing independent—or non-Bell System—telephone service and those engaged in manufacturing and supplying equipment and material needed to meet these service requirements.

About one out of every seven telephones in the United States, including its territories and possessions, is owned and operated by an independent telephone company. In other words, of the 74,417,000 telephones at the end of 1960, about 11,428,000 were operated by independently owned companies. More than one-half of the service area of the United States is served by independent companies.

The independent telephone industry consists of some 3,300 companies, operating 10,750 exchanges. The Nation's long-distance service is furnished primarily by the Bell System toll network. All long-distance facilities are interconnected with independent telephone company lines. Long-distance traffic between the two segments of the industry is freely interchanged.

Agreements are in effect covering routings and divisions of revenues on the interchanged business. Many independent companies themselves own and operate a large mileage of toll lines, mostly regional in character, all interconnected with the Bell network and with the toll facilities of neighboring independent companies.

The independent industry has been responsible for a number of major technical advances in the telephone field. The initial commercial application of the first practical automatic telephone system was made a little more than 65 years ago in an independent exchange at La Porte, Ind. A few years later, the independents introduced the first dial telephones in a number of exchanges in various parts of the country. Today, approximately 90 percent of the telephones furnished by independent companies are dial-operated. Telephone users are also indebted to the independent telephone industry for handset telephones and for direct-operator dialing over long-distance lines.

Independent telephone companies are for the most part small business enterprises. Of the independent companies operating in continental United States as of December 31, 1959, 2,520 had less than 1,000 telephones and 1,856 had less than 450 telephones. Only 121 such independent telephone companies had over 10,000 telephones. Of the 181 independent telephone companies in the State of Texas, for example, 127 had less than 1,000 telephones; 103 had less than 450 telephones; and only 4 had over 10,000 telephones. In the State of Missouri there were then 230 independent telephone companies, of which 194 owned less than 1,000 telephones; 167 had less than 450 telephones; and only 4 owned over 10,000 telephones.<sup>3</sup>

<sup>1</sup> Any reference in this statement to H.R. 6573 shall be deemed equally applicable to the corresponding provisions of H.R. 7039 and any other legislative proposal substantially similar to H.R. 6573.

<sup>2</sup> Any reference in this statement to H.R. 3022 shall be deemed equally applicable to the corresponding provisions of title IV of H.R. 6909 and any other legislative proposal substantially similar to H.R. 3022. No position is taken in this statement with respect to any part of H.R. 6909 other than title IV thereof.

<sup>3</sup> Source: 1960 Annual Statistical Volume of the United States Independent Telephone Association for the Year 1959, pp. 9 and 10.

Independent telephone companies range in size from companies like Healy Telephone Co., Inc., of Healy, Kans., operating 91 telephones; to the telephone operating system of the General Telephone & Electronic Corp., which owns approximately 4,100,000 telephones. Some 55 independent telephone companies file reports with the Federal Communications Commission and 38 independent companies are fully subject to regulation under the Communications Act of 1934, as amended. The vast majority of independent companies are only partially subject to that act, being regulated for the most part by State or other local regulatory bodies.

The typical independent telephone company operates on a small amount of capital. Its subscribers are insufficient in number to support any drastic increases in cost of operation. These companies are required to maintain their facilities in condition to render adequate and prompt service to the public. Their operating expenses and reserves are restricted by regulation to permit only the necessary and normal costs of doing business. Their rates are limited by public authority to a reasonable return. Increased costs through the imposition of unfair or unnecessary burdens on independent companies, large and small alike, not only impair their ability to serve the public, but inevitably result in higher charges to telephone users.

#### USITA'S OBJECTIONS TO H.R. 6573 \*

Telephone companies, as regulated public utilities, have the fundamental obligation and duty of rendering service within their respective franchise areas to all customers without undue preference, prejudice, or discrimination. That obligation is not, however, an unconditional one.

A well-established exception to the general rule noted above will justify a refusal or discontinuance of service used for illegal purposes. (See e.g., *Pike v. Southern Bell Telephone & Telegraph Co.* (1955), 263 Ala. 59, 9 PUR 3d 335, 81 So. 2d 254.) The problem arises in deciding whether a given factual situation constitutes reasonable cause for discontinuing or refusing service under that exception.

The ultimate responsibility for making that determination rests with the telephone company. As stated in *Andrews v. Chesapeake & Potomac Telephone Co.* ((DC DC 1959), 83 F. Supp. 966 at 969): "The telephone company must make its own decision whether the evidence is sufficient to justify discontinuance of the service. The company acts at its peril \* \* \*."

If a telephone company discontinues or refuses service, it may evoke complaints from the customer to the regulatory body having jurisdiction or may subject the telephone company to civil suit (*Rosenthal v. New York Telephone Co.* (1955), 9 PUR 3d 205, 141 NYS 2d 459; *Giordullo v. Cincinnati & Southern Bell Telephone Co.* (Ohio Com Pl 1946), 68 PUR NS 269, 71 NE 2d 858; (*Andrews v. Chesapeake & Potomac Telephone Co., supra*).

On the other hand, a decision not to discontinue or refuse service to a customer allegedly using the service illegally may lead to regulatory sanction. Unfortunately, if H.R. 6573 should be enacted into law as presently written, such a refusal might also subject the telephone company involved and its employees to the severe criminal penalties imposed under section 2 of the bill.

USITA fears that the phrase, "Whoever leases, furnishes, or maintains any wire communication facility with intent that it be used for \* \* \*," might be construed as including a telephone company which had some information concerning illegal use but not enough to constitute reasonable cause for termination of service. USITA's primary concern with H.R. 6573 lies in the possibility that such a construction would be advanced. That concern is premised both on the broad context in which the words "intent" and "knowingly" are employed, and on the fact that telephone companies are frequently confronted with information alleging illegal use by a customer of facilities furnished by the telephone company, which information may or may not constitute reasonable cause for discontinuing or refusing service.

Naturally, it is important that there be adequate legislation to effectively enforce criminal statutes, including laws which prohibit gambling. That enforcement should not be conducted in a manner which would impose unfair and unreasonable burdens on, and might even bring criminal sanctions against a telephone company whose facilities may be utilized for illegal purposes under circumstances which the telephone company, in its considered judgment, determines would not justify a discontinuance or refusal of service. Yet such is

\* See footnote 1, supra.

precisely the effect USITA feels H.R. 6573 might have if enacted in its present form.

Accordingly, it is earnestly suggested that lines 6 through 13, page 2, of H.R. 6573, be amended to contain the following italicized language:

"(a) Whoever, *not being a person conducting business as a communications common carrier for hire which also affords public landline message telephone service*, leases, furnishes, or maintains any wire communication facility with intent that it be used for the transmission in interstate or foreign commerce of bets or wagers, or information assisting in the placing of bets or wagers, or any sporting event or contest, or knowingly uses such facility for any such transmission, shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

#### USITA'S OBJECTIONS TO H.R. 3022<sup>\*</sup>

H.R. 3022, as presently written, not only places telephone companies in the role of policeman, but it also runs contrary to the antidisclosure provisions of section 605 of the Communications Act of 1934, as amended. Section 605 of that act provides in part as follows:

"No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, \* \* \* and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purpose, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto \* \* \*."

The twofold purpose of section 605 was declared in *United States v. Sullivan* (116 F. Supp. 480 (DC DC 1953)), to be as follows:

"It is obvious from the phraseology of the statute that it was aimed at actions of two types: First, it sought to prohibit a telephone switchboard operator from divulging any conversation that may be overheard, or telegraph or radio operator from disclosing the contents of a telegram or radiogram; and second, it sought to preclude any unauthorized person from surreptitiously attaching some mechanical apparatus to a telephone or telegraph wire and thereby listening to or otherwise intercepting communications \* \* \*."

Under section 2 of H.R. 3022 (lines 6 through 20, page 4), however, a switchboard operator overhearing any part of a conversation which might be considered as giving her "reason to believe" that a party to the conversation "is a person required by section 4412(a) of the Internal Revenue Code of 1954 to be registered" would, together with the telephone company employing her, be subject to the imposition of severe criminal penalties if they fail to inform the Department of Justice "of the circumstances which give rise to such belief." In short, H.R. 3022 would require the making of the very disclosure which Congress has forbidden in enacting section 605 of the Communications Act.

Even more serious is the fact that H.R. 3022 would virtually require telephone companies and their employees to turn detective in order to protect themselves from criminal charges which might be brought under H.R. 3022. The test of criminality under that proposed legislation is whether a telephone company or its employees had the requisite "reason to believe" telephone company facilities and services will be or are being used by a person required to register under I.R.C., section 4412(a).

The "reason to believe" standard is not defined in the proposed legislation. In Webster's New Collegiate Dictionary (second edition), the word "reason" is defined in part as a "consideration, motive, or judgment inducing or confirming a belief, influencing the will, or leading to an action \* \* \* a ground or cause."

There is little to recommend the use of such broad, vague language in defining the new crime which would be created by H.R. 3022. The language used

<sup>\*</sup> See footnote 2, *supra*.

poses many serious questions. For instance, is the test of criminality subjective or objective? To what extent would a telephone company employee, responding to a request for telephone service repair or installation, be required to examine the premises and customer for evidence of gambling activity? What degree of expertise should be possessed by telephone company employees in being able to recognize evidence of gambling operations and persons engaged therein? To what extent would telephone company employees be required to monitor or listen in on telephone conversations?

To avoid the risk of criminal charges, it would almost seem mandatory that telephone companies and their employees investigate and inquire into the lives and activities of their customers and the purpose for which telephone company service is to be used. The taking of such additional precautions could easily be hazardous for telephone company employees and result in increased service costs to their companies.

These additional hazards combined with the underlying possibility of criminal charges might result in the resignation of valued telephone company employees, increased employee turnover, and more difficult recruitment of additional and replacement employees. Increased operating expenses attendant upon taking precautions designed to forestall the criminal sanctions which could be imposed under H.R. 3022 would undoubtedly be reflected in increased charges to the general telephone-using public.

For all the foregoing reasons, it is submitted on behalf of the independent segment of the telephone industry that the new section 1086 of title 18 of the United States Code, as proposed in H.R. 3022, places an unfair and unreasonable burden upon telephone companies, contains an unwise approach to the problem of controlling interstate gambling, and would not be in the public interest. Accordingly, this subcommittee is earnestly requested to delete in its entirety the proposed new section 1086 of title 18 of the United States Code.

On behalf of the United States Independent Telephone Association and the independent segment of the telephone industry which it represents, I wish to thank the members of this subcommittee for granting me this opportunity of presenting the foregoing views and recommendations.

The CHAIRMAN. The committee will now adjourn to reassemble at 10 o'clock on Wednesday morning next.

(Thereupon, at 11:10 a.m., the committee adjourned, to reconvene Wednesday morning, 10 a.m., May 24, 1961.)



# LEGISLATION RELATING TO ORGANIZED CRIME

WEDNESDAY, MAY 24, 1961

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE No. 5  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Members present: Representatives Celler (chairman of the subcommittee), Rodino, Rogers, Holtzman, Toll, McCulloch, and Meader.

Also present: Representative William C. Cramer; William R. Foley, general counsel; Ricard C. Peet and William H. Crabtree, associate counsel.

The CHAIRMAN. The committee will come to order.

The Chair will place in the record a statement on behalf of the General Telephone & Electronics Corp by its vice president of operations, Walter G. Wright; and a statement from Rufus King, section delegate, Criminal Law Section of the American Bar Association.

(The statements are as follows:)

My name is Walter G. Wright. I am vice president—operations of General Telephone & Electronics Corp.

General Telephone & Electronics Corp. is a holding company which has, among other interests, telephone companies which operate in 31 States in the continental United States including Alaska. These domestic telephone subsidiaries operate more than 4 million telephones. The central offices of these telephone companies and their toll lines are connected with other independent telephone companies and with the nationwide toll network of the Bell System. Calls may thus be made from any telephone in the general system to practically any telephone in the United States and in many foreign countries.

We appreciate the opportunity of being able to present to your committee our comments concerning proposed legislation relating to the use of the communications facilities for the transmission of gambling information in interstate commerce and foreign commerce.

The telephone companies in the general system are members of the U.S. Independent Telephone Association. We understand that comments on behalf of that association were filed with your committee on May 18, 1961.

The general system wholeheartedly supports the efforts of your committee to establish methods to deal more effectively with gambling and to control organized crime. We have in the past cooperated in every way possible with Federal, State, and local law enforcement authorities and will continue to give them our support in the future.

We do not, however, believe that H.R. 3022 and H.R. 7039 (the provisions of which are identical with those of H.R. 8573 so far as they relate to telephone companies) accomplish their objectives without placing an undue burden upon the telephone companies. We are not suggesting that the telephone industry should not be willing to undertake certain obligations to combat organized crime. In fact, as a public utility, it is in the interest of the telephone industry to make sure that its facilities are used only for lawful purposes. We believe, however, that the objectives of this committee can be adequately accomplished on a basis which will permit cooperation between the telephone companies and the

authorities charged with the responsibility for enforcing the law while at the same time providing adequate protection to the lawful interests of the telephone company and its subscribers.

Our objections to H.R. 3022 and H.R. 7039 (also H.R. 6573) are substantially those outlined in the statement of the U.S. Independent Telephone Association submitted to this committee and we will not burden the record by repeating them here.

We believe that H.R. 7031, which has recently been filed and is before the House Committee on Interstate and Foreign Commerce, and its counter part S. 528, presently before the Committee on the Judiciary of the Senate, are well designed to support the interests and requirements of the law-enforcing authorities without prejudicing the telephone companies.

We believe that legislation designed to prohibit the transmission of gambling information and interstate and foreign commerce by communications facilities should, insofar as it involves common carrier communications facilities:

(a) Be consistent with section 605 of the Communication Act of 1934, as amended, so that the telephone company will not be required to disclose information which it is prohibited from disclosing under that provision;

(b) While giving the appropriate law enforcement agency authority to require the telephone company to discontinue service, relieve the telephone company of any claim for damages or penalties, either civil or criminal, as a result of compliance of the telephone company with a request of a law enforcement agency for a discontinuance of service.

We believe that in the framework of these concepts there can be full cooperation between the telephone companies and those assigned the task of law enforcement.

AMERICAN BAR ASSOCIATION,  
SECTION OF CRIMINAL LAW,  
May 18, 1961.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: Thank you for your letter of May 9 inviting me to comment on certain bills pertaining to criminal law enforcement which are being considered by Subcommittee No. 5 of the House Judiciary Committee.

I have examined these bills and find that only one of them, H.R. 5230 has been considered and approved by the House of Delegates of the American Bar Association. H.R. 5230 is substantially identical with H.R. 7118 (83d Cong.) which was approved by the House of Delegates on March 8, 1954. I am therefore authorized to state that the American Bar Association favors the enactment of this legislation.

I would like also to record my own opinion, apart from the foregoing approval by the association, that H.R. 5230 would be the most effective single measure that could be enacted by the Congress to deal with the problem of organized crime. It seems obvious to me that the very word "organized" means conspiracy, and that precisely the type of crime which has flourished beyond the reach of the States is criminal enterprise so organized as to extend beyond the jurisdiction of any single State or local enforcement authority. In this connection, again speaking for myself strictly, I feel that use of the conspiracy principle is much more moderate and accurate than the attempt to make use of interstate commerce or interstate travel as is proposed in H.R. 6572.

Finally (again speaking only for myself) I am somewhat disturbed by the amendments proposed in H.R. 1246 and H.R. 3021 which would appear to broaden the immunity provisions of title 18, as they now apply to offenses involving the national security and therefore the Federal Government, so as to reach many offenses which are essentially within the jurisdiction of State and local authorities. I am inclined to be very conservative about the use of the immunity device, and believe that such an expansion might give rise to many problems and perhaps defeat important prosecutions.

Respectfully,

RUFUS KINO,  
*Section Delegate, Criminal Law Section.*

The CHAIRMAN. The first witness this morning will be our distinguished colleague from New York, a very dear friend of mine and a representative, naturally, from my delegation. We are always glad to hear from Congressman Herbert Zelenko.

**STATEMENT OF HON. HERBERT ZELENKO, A REPRESENTATIVE IN CONGRESS FROM THE 21ST CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK**

Mr. ZELENKO. Thank you, Mr. Chairman. I have a prepared statement which I believe your committee has before you.

Mr. Chairman and members of the committee, it is a privilege for me to appear before you. My purpose here today is to support H.R. 1246, which I introduced on January 3, 1961. This legislation is designed to penetrate the fifth amendment conspiracy of silence of the economic underworld which has thus far impeded the efforts of Federal law enforcement agencies and of congressional committees.

The bill will promote the effectiveness of every committee charged with the responsibility of ferreting out information necessary to the work of that committee in combating, through legislation, the problem of organized crime and crime of interstate character. It will also give to the Attorney General of the United States and to the various State enforcement agencies an additional weapon in their all-out assault against interstate and international racketeers and hoodlums.

Under protective constitutional procedures it will permit Congress and U.S. attorneys to grant immunity to witnesses during labor-management investigations and in all other phases of interstate commerce. This will remove any legal basis for the refusal of a witness to testify.

The CHAIRMAN. Mr. Zelenko, when you say by U.S. attorneys, you mean the attorneys petition the court, and the court would grant the order.

Mr. ZELENKO. Yes.

Up to the present, most hearings on these subjects have been able to expose a mere fragment of the cancerous infiltration of criminals into the national economy. Under the handicap of fifth amendment pleas, the hearings have given the Nation a distorted, unrealistic, and to a large extent sterile, image of what really goes on.

This legislation, if enacted, would be an enlargement of the scope of the immunity statute of 1954, title 18, United States Code, section 3486 (a), (b), (c), which now applies only to treason cases. The 1954 act was held constitutional and not violative of any fundamental rights by the U.S. Supreme Court in the case of *Ullman v. United States* (350 U.S. 436).

The basis upon which the proposed legislation can be used in interstate commerce matters will be found in the Court's opinion where it said at page 505:

The Immunity Act is concerned with the national security. It reflects a congressional policy to increase the possibility of more complete and open disclosure by removal of fear of State prosecution. We cannot say that Congress paramount authority in safeguarding national security does not justify the restriction it has placed on the exercise of State power for the more effective exercise of conceded Federal power. We have already, in the name of the commerce clause, upheld a similar restriction on State court jurisdiction, *Brown v. Walker* (161 U.S. 606-607; 16 S. Ct. 650-651; 40 L. Ed. 819), and we can find no distinction between the reach of congressional power with respect to commerce and its power with respect to national security. (See also *Hines v. Davidowitz*, 312 U.S. 52; 61 S. Ct. 399; 85 L. Ed. 581.)

The CHAIRMAN. Let me ask you at that point: As a good lawyer, do you think the granting of Federal immunity will ban a State prosecution? Would it involve also State immunity?

Mr. ZELENKO. This would involve State immunity also.

The CHAIRMAN. Where, how, and under what circumstances, and what precedents have you got for that?

Mr. ZELENKO. The granting of immunity in a situation like this will grant immunity against State court prosecution.

The CHAIRMAN. Can you give any Federal precedent for that?

Mr. ZELENKO. Mr. Chairman, I regret that I did not bring it with me, but the Attorney General of the United States, in an informal letter to me on this legislation, quoted certain precedents where he said that, if this legislation were enacted, it would then grant immunity in State court prosecutions.

I haven't brought it with me unfortunately, but I shall forward it to the committee.

The CHAIRMAN. Are there specific cases where that question arose?

Mr. ZELENKO. There are a number, Mr. Chairman.

The CHAIRMAN. Aren't all those opinions inferential rather than direct? Like, for example, the one here in the Supreme Court decision, which you quoted—the *Ullman* case.

It reflects a congressional policy to increase the possibility of more complete and open disclosure by removal of fear of State prosecution.

But that was not the specific issue in this case, whether or not a State prosecution might be banned. This was only an offhand opinion of the writer in that decision.

Mr. ZELENKO. That is right, Mr. Chairman. It was not a specific finding in this case, but there have been precedents prior to the *Ullman* case. I will forward them to the chairman. They are contained in the letter which the Attorney General sent to me, as I say, in an informal comment on this legislation.

The CHAIRMAN. We will be glad to receive those.

Mr. ZELENKO. The procedures of the 1954 Immunity Act which will be adopted in the new legislation provide for notification to the Attorney General of the intention to confer immunity and the consent of the Federal courts. The amendment will merely add additional phraseology to the present act to include interstate commerce, as defined in Federal statutes, including the Labor-Management Act of 1960.

The fifth amendment of the Constitution reads:

\* \* \* nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law \* \* \*.

The Supreme Court of the United States has held that an individual may refuse to answer questions when such answers might tend to incriminate him and subject him to possible criminal prosecution. As is well known, this amendment has become a gigantic stumbling block in the way of investigatory agencies, and most especially during recent years, congressional committees. Therefore, this has precipitated a search for ways in which to elicit testimony despite the existence of the fifth amendment. Perhaps the most successful method used has been in the form of passing statutes which grant immunity to witnesses

from prosecution as to the particular transaction about which they testify.

I might digress for a moment. There are a number of such statutes dealing with specific areas, as in proceedings before the Interstate Commerce Commission; the Landrum-Griffin Act granting immunity as to the particular subject inquired of, and on several others. That is what I am alluding to.

These statutes have been upheld by the Supreme Court, thus preventing the witnesses from taking the fifth amendment and forcing them to testify or be faced with a contempt citation but providing the constitutional immunity.

Now, the basic purpose of immunity statutes is to deal more effectively with the problem of crime and, more particularly, crime of grand proportion, that which has come to be known as organized crime, including, of course, the labor racketeer.

The Nation's ability and success in dealing with organized crime has been nothing short of total failure. Organized crime, transcending State lines and the Nation's boundaries, flourishes and laughingly mocks our Nation's valiant efforts to bring their leaders to justice. The dismal failure of the Government in the recent *Appalachian* case has added another ribbon to the campaign medals of organized interstate crime.

Every prosecutor knows that an occasional conviction of a single smalltime racketeer does little to destroy the cancerous complex of illegal operations. Only information that will lead us to the heart of organized crime will satisfy and will be ultimately successful.

The only questions we have to ask are: Has organized crime reached that stage? Has crime of an interstate character reached that stage? If the answers are "no" and we are content with the success which the Government has met in these areas, then no legislation is needed. On the contrary, if we are not content, then some legislation is necessary.

We must assume, rightly or wrongly, that the several States can meet their internal problems in law enforcement. Where Federal aid is needed and sought is in criminal activity of an interstate character, the syndicated crime, the organized crime complex. This is the area of the intended legislation, the granting of immunity to witnesses who may lead us to the core, to the heart of organized crime. This information exposing crimes affecting interstate commerce, crimes of an interstate character, would ultimately destroy our "enemy within."

The only argument against such legislation is that it may thwart prosecution against those granted immunity. This argument is answered summarily by the fact that if we wish to grant immunity to a particular witness, it is obviously not this witness that we wish to prosecute. But, rather, it is for the purpose of rooting out the leaders and kingpins of the great crime conspiracy.

The legislation is broad, but it is only as broad as the target to which it is directed, crime of interstate character which, in turn, is as broad as our country.

Of course, every safeguard of the present title 18, section 3486, of the United States Code shall continue: that in the case of proceedings before one of the Houses of Congress, a majority of the Members be present; that in the case of proceedings before a committee, two-thirds of the members of the full committee shall, by affirma-

tive vote, have authorized such witness to be granted immunity; that an order of the U.S. district court be entered requiring such person to testify; that no such immunity shall be granted without first having notified the Attorney General of the United States of such action and thereafter having secured the approval of the U.S. district court for the district wherein such inquiry is being held; and that the Attorney General of the United States be notified of the time of each proposed application to the U.S. district court and be given the opportunity to be heard with respect thereto prior to the entrance into the record of the order of the district court.

With these safeguards written in, there would be no danger of thwarting prosecution by the Department of Justice.

This legislation should also be welcomed by the various State enforcement agencies for the reason that it will reach areas which are inaccessible to them but provide leads so that they can cooperate with the local aspects of the crimes involved.

The sole result, for the first time in history, would be to have a weapon strong enough, sure enough to deal a crushing blow to the labor racketeer, to organized crime, and to all crime of an interstate character.

I would appreciate the favorable consideration of this legislation by the committee.

I thank you for permitting me to appear before you.

The CHAIRMAN. I am going to ask you something along the following lines. I have been following the *Ullman* case from which you have quoted. On page 435 of the *Ullman* case we read the following:

The report of the Committee on the Judiciary of the House of Representatives supports the broad interpretation of the act before us.

This is a quotation from the report of this committee:

Even though the power of Congress to prohibit a subsequent State prosecution is doubtful, such a constitutional question should not prevent the enactment of the recommended bill. The innuance of the amendment is sufficiently broad to ban the subsequent State prosecution if it be determined that the Congress has the constitutional power to do so.

"In addition, the amendment recommended provides the additional protection as set forth in the *Adams* case by outlawing the subsequent use of the compelled testimony in any criminal proceeding, State or Federal. By use of these two distinct concepts, the committee believes that the fullest protection that can be afforded the witness will be achieved. H.R. 2609, 83d Congress, 2d session."

The Court goes on to say:

Petitioner questions the constitutional power of Congress to grant immunity from State prosecution. Congressional abolition of State power to punish crimes committed in violation of State law presents a more drastic exercise of constitutional power than that which we considered in the *Adams* case. In that case only the use of the compelled testimony, not prosecution itself, was prohibited.

In other words, as far as the Supreme Court is concerned, there is no case on the score that immunity from Federal prosecution would also embrace immunity from State prosecution. The only case was decided in 1955. I know of no case offhand in the Supreme Court since that date which covers the point I made, namely, whether or not immunity from Federal prosecution embraces immunity from State prosecution.

Mr. ZELENKO. Mr. Chairman, you have read from the decision and I am acquainted with it. I have already mentioned the informal

letter of the Attorney General. I did not go past the letter, which in effect stated what I indicated to the committee. However, I do not think the part of the opinion which you read would be fatal to the constitutionality of my bill.

The CHAIRMAN. Speaking for myself personally and not for the committee, I am in favor of the granting of this power of immunity by a duly constituted congressional committee and by the courts as well. I think we should risk the decision of the question of whether or not Federal immunity would embrace State immunity.

Do the members of the committee have any questions? Mr. Cramer?

Mr. CRAMER. This question has been raised before, of course, in the hearings. It is apparently a two-part questions, as I understand it, Mr. Chairman. No. 1, Would it be constitutional, the proposal itself, if it did include immunity from State prosecution? The second question is a matter of policy as to whether any legislation drafted should specifically include immunity from State action.

That is the two-part question involved, is it not, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. CRAMER. Reading the legislation involved, the gentleman's bill, as well as previous legislation which I have introduced—H.R. 7393 in the 86th Congress, pursuant to Attorney General Rogers' recommendations; and also H.R. 7392 last session, and 3021 in this session; and also as contained in title 7 of 6909, the omnibus bill which I introduced—it has this language, and I am quoting from page 18 of the omnibus bill, line 9:

But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court.

It was my impression, in introducing the legislation, that that did include a State court action as well.

The CHAIRMAN. That is understood. I am questioning whether or not the Congress has the power to grant immunity involving a State prosecution. I am inclined to think it does. If there are any doubts among us, we should go forward with legislation on that. That is the way I feel about it.

Mr. CRAMER. I am wholeheartedly in agreement with the chairman on that. In my opinion it is included and was included in the Attorney General's recommendation and is included in the gentleman's bill.

Mr. ZELENKO. May I suggest to the gentleman that the basis of my legislation encompasses the constitutionality of the *Ullman* decision. In the dicta, as I indicated, the Court stated there was in effect no difference between Federal jurisdiction in interstate commerce and treason. Taking into consideration the constitutionality of the immunity statute as decided by the Supreme Court in the *Ullman* case, it follows from the dicta just alluded to, that enlarging the scope of the statute to include interstate commerce would be constitutional.

Mr. CRAMER. The chairman, I think, is calling attention to the fact that the *Ullman* decision didn't actually decide the question of whether an immunity in a State court was constitutional.

Mr. FOLEY. Mr. Zelenko, on that very point, though, let's not confuse two things here. One is the immunity grant; second is the use of compelled testimony.

Mr. ZELENKO. Right.

Mr. FOLEY. As to the second, the ban on the use of compelled testimony in any court is an old statute. It was decided by the Supreme Court in *Adams v. Merrill* under the old statute that it could not be used in any court.

Then when the 1954 act was rewritten, the immunity section was inserted. The old statute relating to compelled testimony was incorporated right into the statute which you seek to amend today. Is that not so? But, getting back to the *Ullman* question and the immunity issue, the defense raised the constitutional question that, if the 1954 Grant of Immunity Act did not reach State immunity, it was unconstitutional. That is the point that was raised, wasn't it?

Mr. ZELENKO. That's right.

Mr. FOLEY. The Court said it was constitutional and referred to the very committee report out of this committee that said at this point it is not clear, but if it should be necessary to equate the privilege of the fifth amendment, Congress means to equate it.

Mr. ZELENKO. Mr. Foley, you are exactly correct. My point is that as long as the 1954 statute was held constitutional we should not be too finicky about deciding that other proposition. The statute could then apply to interstate commerce where all of the organized crime is flourishing.

Mr. FOLEY. Would you say it is better to amend the 1954 act because we already have case law interpreting it, rather than rewrite a new section?

Mr. ZELENKO. Amendment is the better way. I would go along with something that has already been upheld to be constitutional.

I would rely on the constitutionality of the 1954 statute. The only way we can reach these racketeers is through interstate commerce.

Mr. CRAMER. I am wholeheartedly in agreement with the gentleman.

Mr. ZELENKO. No person or racketeer before a committee could say, "I want to give myself immunity." It has to be conferred on him. He doesn't have a right to it. Once a committee confers it, then of course it is in existence. As I pointed out, Mr. Chairman, any committee or any U.S. attorney can pick the person whom they wish to confer the immunity on in order to break open whatever Pandora's box of crime they wish to.

The CHAIRMAN. Mr. Zelenko, you mentioned a letter I understood you received from the Attorney General.

Mr. ZELENKO. Yes. I received a letter from the Attorney General. I sent him a copy of this some time ago for an informal comment on this legislation, together with my comments on crime legislation in general.

The CHAIRMAN. It may be that his letter to you would be practically the same as his testimony here before this committee.

Mr. ZELENKO. Yes, sir.

The CHAIRMAN. Would you be willing to let us see that letter? If it is appropriate and pertinent, it shall be placed in the record.

Mr. ZELENKO. I appreciate that, Mr. Chairman.

The CHAIRMAN. Thank you very much. We are very grateful to you.

Mr. ZELENKO. Thank you very much, Mr. Chairman.  
(The letter supplied follows:)

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., April 28, 1961.

Hon. HERBERT ZELENKO,  
*House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN: This is in further response to your letter of March 20, 1961. After careful consideration of the provisions of H.R. 1246, we are inclined to the view that the immunity granted by the bill is too broad in scope.

The existing provisions of 18 U.S.C. 3486 afforded a witness immunity from prosecution "for or on account of any transaction, matter, or thing concerning which he was compelled \* \* \* to testify \* \* \* in any court." This has been construed to include prosecutions in State courts as well as Federal. *Adams v. Maryland*, 347 U.S. 179 (1954); *Ulman v. United States*, 350 U.S. 422 (1956); *Reina v. United States*, 364 U.S. 507 (1960). The existing law, of course, relates to testimony concerning attempts to endanger or overthrow the Government, a matter punishable under Federal law, and not subject to State prosecution. The broader language of H.R. 1246 would include testimony concerning a wide range of activities which are crimes under both Federal and State law, and as to which the Federal interest may be comparatively slight. Under the bill, and existing Supreme Court decisions, all such State prosecutions would be barred. Such a result would seem to be too drastic from the standpoint of a proper balance of State-Federal relations.

H.R. 1246 would also enable congressional committees to grant immunity in "any matter which affects interstate or foreign commerce or the free flow thereof." A witness called to testify before a congressional committee might take advantage of this provision to render himself free from prosecution for activities which the committee had no intention to delve into, thereby thwarting possible prosecutions by the Department of Justice.

In conclusion, it is our opinion that the rendering of immunity from prosecution is best approached on a subject-by-subject basis, as in the more than 40 existing immunity statutes, applicable in many of the fields which would be embraced within the scope of H.R. 1246. In addition, we might point out that two current legislative proposals of this Department are now pending before the House to provide for immunity grants in the criminal law field. These are H.R. 3021 (a bill to amend ch. 95 of title 18), and H.R. 3024 (a bill to amend the act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce).

Sincerely,

ROBERT F. KENNEDY, *Attorney General*.

The CHAIRMAN. The next witness is Mr. John J. Hanselman, assistant vice president of the American Telephone & Telegraph Co. Mr. Hanselman.

**STATEMENT OF JOHN J. HANSELMAN, ASSISTANT VICE PRESIDENT,  
THE AMERICAN TELEPHONE & TELEGRAPH CO.**

Mr. HANSELMAN. My name is John J. Hanselman. I am an assistant vice president of the American Telephone & Telegraph Co. My functions are to advise and give assistance to the various associated operating companies in the Bell System regarding operating matters. This includes matters relating to service and operating relations between the telephone companies and their customers.

First of all, I would like to express to the members of this committee the appreciation of the Bell System for your courtesy in providing this opportunity to present our views on the pending legislation regarding the transmission of gambling information in interstate and foreign commerce.

While I understand that your committee will be considering several proposals intended to bring about a more effective system of com-

bating organized crime, I would like to direct my comments to the subject matter of H.R. 7039. This deals with the transmission of gambling information and the illegal use of communication facilities. It is therefore of direct interest to the Bell System.

At the outset I want to make it absolutely clear that the Bell System sincerely supports the objectives of your committee in considering the most effective means to suppress organized gambling activities. As you are aware, the problem of preventing the transmission of gambling information has been the subject of considerable legislative interest in recent years. On several occasions representatives of the Bell System have participated in hearings and discussions with various committees of the Congress and with representatives of the Department of Justice as they were studying the best solution to this problem.

The Bell System has a longstanding policy against the use of its facilities for illegal purposes. American Telephone & Telegraph Co., on its own behalf and that of the associated Bell operating companies has filed with the Federal Communications Commission interstate tariffs which provide:

The service is furnished subject to the condition that it will not be used for an unlawful purpose.

Practically all of the operating companies have filed similar tariffs with the several State commissions which regulate intrastate telephone service.

The position of the Bell System with regard to the specific problem of the use of its facilities for illegal gambling purposes has been publicly expressed by many Bell System officials.

For example, Mr. C. F. Craig, president of the American Telephone & Telegraph Co. at the time, said in answer to a question from the floor at a stockholders' meeting:

I would like to say flatly that the telephone companies of the Bell System do not want bookie business. They want no part of it. We cooperate in every way we can with law enforcement agencies to keep such business off of the lines and the facilities of the Bell System.

Mr. F. R. Kappel, now president of the A.T. & T. Co., is in complete agreement with Mr. Craig's statement.

The telephone companies have established practices for disconnecting service or refusing applications for service where there has been evidence that the service was being or would be used for illegal purposes. This cooperative action by the telephone companies with law enforcement agencies has been going on for many years.

The CHAIRMAN. Have you ever cut off telephone service to so-called bookies who have been getting trackside information for their own gambling advantage?

Mr. HANSELMAN. When we have information from a law enforcement officer that a bookie is using our telephone service, we discontinue his service. Or, as a matter of fact, if an applicant comes in to our office or telephones in and asks for service and in our normal inquiries as to the use he is going to make of the service he indicates that it is for illegal purposes, or we have some grave suspicion about how he is going to use the service and that it may be used——

The CHAIRMAN. What is that last? I didn't hear that.

Mr. HANSELMAN. If we have some grave suspicion that it may be used for illegal purposes, we then do not provide the service.

We refer through lines of organization to the appropriate official in the telephone company, and he in turn—where there is need to do so—refers it to the appropriate law enforcement officer.

The CHAIRMAN. You said you refer to a law enforcement officer. But then, do you summarily cut off the service?

Mr. HANSELMAN. I spoke of it in two ways, Mr. Chairman. One, if we ourselves at the time an applicant for telephone service comes into our office and indicates it is to be used for illegal purposes, or have reason to believe because of the statements which he makes that it may be used for illegal purposes, we do not provide the telephone service to this applicant.

Likewise, if in the normal course of our visits to customers' premises, or from a statement from a law enforcement officer we are advised that the service is being used for illegal purposes, we will terminate the service.

The CHAIRMAN. Do you have a staff to check on suspicious persons or suspicious companies?

Mr. HANSELMAN. Not as a special staff set aside for this purpose. Let me explain. When a customer calls in to the telephone company and asks for telephone service, in the very nature of the case we make a number of inquiries with regard to his use of the service. We must do that in the first place in order to determine whether the customer should be given residence service or business service, because of the difference in the rate, of course, between residence service and business service.

If the customer says he is using it for business purposes, we then specifically inquire as to the nature of the use. This is done so that the customers' proper business designation can be listed in the classified telephone directory and in the regular telephone directory.

So in every single case that comes to us as an applicant for service, we investigate the use which is to be made of the service so that, No. 1, we can charge the customer properly; No. 2, we can properly designate his line of business.

In addition, we look into the matter very carefully from the standpoint of credit. We find out whether the person has had telephone service before and we get a great many facts in connection with each of these investigations. This is done by our normal business office organization, our service representatives.

Now, if in these normal investigations which take place with all customers there is any indication that the service is to be used illegally, then we do not provide the service. All our service representatives in their training are trained to make these inquiries and to note any cases that may be suspicious.

Those in due course are referred to the management of the company; and if there is any support of suspicion, the telephone service is not provided.

The CHAIRMAN. In other words, that is all in the inception and before the service is provided, to see whether the credit is good and whether or not the service is to be used in the home or in a business, and so forth?

Mr. HANSELMAN. That is right.

The CHAIRMAN. My question is this: After that service is installed, do you have anybody who—shall we say for lack of better terminology—monitors that service to see how it is being used?

Mr. HANSELMAN. No; we do not, sir. What we do do is this, however. If in the course of our day-to-day operations a visit, for example, by an installer or repairman on the customer's premises—if, for example, our installation or repairman is not given access to the premises when he calls on the customer and he is not allowed to look at the telephone facilities, this we consider sufficient indication of misuse of the service so that we then either discontinue the service right then and there; or, if there is some doubt in the matter, we will refer to an appropriate law enforcement officer.

The CHAIRMAN. Suppose, for example, a man whom you don't know, but whose credit apparently is good, is given the service and after the service is installed you discover that within a period of a few weeks several thousand calls have been made to a racetrack. Is there any way you can check that vast number of calls to a racetrack?

Have you any way of discovering that those vast numbers of calls have been placed between this individual and a racetrack so as to excite your suspicions? Is there any method by which you can make such detection?

Mr. HANSELMAN. None that I know of, because if the person making these calls on a local basis dials the calls, there is no way that we know where the call is made to. If he dials the calls on a long-distance basis, there is likewise no indication at the time that he is calling any particular place.

All we have is an indication of the total number of calls, the length of the call, and the terminal point.

The CHAIRMAN. Suppose he has 20 telephones installed and he has a switchboard operator. Would that make any difference?

Mr. HANSELMAN. I am not sure I understand your question.

The CHAIRMAN. Suppose a man has a number of telephones installed, a number of lines for different numbers, and he has a switchboard operator. Would that make any difference? Could you detect those facts more readily then?

Mr. HANSELMAN. If the customer comes to us and asks for switchboard service, in these initial lines of investigation that I just described, we would determine what the nature and type of his business is. If it was a well-established business, we would provide the necessary central office circuits and the switchboard.

Is your question: What would happen subsequently?

The CHAIRMAN. That's right. In other words, you have no way by which you can detect anything that would arouse your suspicion that over those wires was being conveyed trackside information?

Mr. HANSELMAN. No; we would have no indication of that.

The CHAIRMAN. Mr. Rodino?

Mr. RODINO. Mr. Hanselman, do you keep a record of the applications that have been made to your company where suspicion has been aroused and where evidence which you gather reveals that there might be gambling operations and where you have turned them down?

Mr. HANSELMAN. Oh, yes; we keep a list in at least two places of customers who have been refused service or where the service has been discontinued in that given exchange. That information is maintained by the manager in the local business office. It is also maintained in the line assignment bureau.

So if service has been discontinued and service is asked for again at the same location, we would not provide the service without hav-

ing clearly established that it is not the customer who previously had the service discontinued.

Mr. RODINO. In other words, you do, though, have a record of the applicants who have been turned down because information reveals that they might have indulged in this kind of operation?

Mr. HANSELMAN. This is correct.

Mr. RODINO. Do you also have a record of the applications that have been approved where you have conducted your initial inquiry and then later on evidence reveals that these people were conducting a gambling operation?

Mr. HANSELMAN. Yes; I believe we would have likewise information on that because we try very hard in connection with individual cases where it is known that the person is a gambler or is making illegal use of the service to see to it that he does not get service again.

Now, I must say that these——

Mr. RODINO. Right there, why wouldn't you detect at the time you are making this inquiry—I don't know how extensively you go into this initially, but if you go into this, why wouldn't you detect then what you find out later to be a gambling operation? Are they disguised in a certain manner when they make their application to you so that the type of information you are seeking won't reveal it?

Mr. HANSELMAN. Gamblers generally know that we will not provide telephone service to bookies and gamblers.

Mr. RODINO. They are not going to say they are bookies or gamblers.

Mr. HANSELMAN. They certainly no longer say that. In the past they even went that far and we, of course, refused service to them. But now we, as I said, have information——

Mr. RODINO. They are certainly going to take on the color of respected business establishments or individuals; aren't they?

Mr. HANSELMAN. That is correct.

Mr. RODINO. So what kind of information actually do you seek? What kind of information could possibly disclose to you that these people are going to undertake a gambling operation?

Mr. HANSELMAN. Do you mean how can the sort of investigations which we make—how could we determine from that whether or not the person is a gambler?

Mr. RODINO. Yes, unless you actually monitor afterward?

Mr. HANSELMAN. No, we do not monitor. The information which we get may reveal this sort of thing. A customer comes in, says he is opening a laundry, let's say, and he wants three or four telephones installed in the back of the laundry. This to us is adequate evidence, after we discuss it with him, that this is not to be used in connection with a local laundry. So we refuse him service.

There is quite a lot of information that we can get in connection with developing the use of the service or the credit of the customer to determine whether or not he is likely to be using the service for illegal purposes. The facts are that we literally, throughout the Bell System, refuse service to thousands of people.

Mr. RODINO. Are they more or less individual applicants or business establishments?

Mr. HANSELMAN. They use different methods of approach. Sometimes it is in a business establishment such as a laundry. It may be they want service in an empty store. It may be that they are asking

for service in an apartment, and there is something that leads our people to suspect that the service is to be illegally used.

The fact is that our local managers, having had considerable experience in this field, can tell pretty much from the type of information which they get whether or not there is a major likelihood of illegal use. Of course we can't possibly determine every individual case, but we get quite a few of them.

Mr. FOLEY. Mr. Hanselman, let me give you an actual case that existed as of February 10, 1961, known as the Delaware Sports Service, located at 601 Tatlaw Street, Wilmington, Del. The New York State Crime Commission investigators on that date visited the premises, and according to their report, this is what they found:

The building in which Delaware Sports is located is an old three-story residence in a shabby neighborhood. The first floor office, apparently little used, up several steps from the street, contains files of dusty phonograph records, old radios and radio parts, and four operative telephones.

On the second floor is a small room in which two women employees sit. One sits before 16 separate telephones on individual circuits, each having an attached light on the wall which glows when the telephone rings. The other, before a 15-line telephone switchboard. These 31 phones enable Delaware to receive as many as 310 calls in a 10-minute period.

Here is the actual operation observed by eyewitnesses, in the presence of the staff.

Alfred Tollin, who operated the place, prepared to receive and transmit the winner of the sixth race at Fairgrounds, Florida. First the catcher called in on the open line.

That is the observer down off the track.

Then as each bookmaker telephoned, his code name was checked against a list of those who had paid to obtain one or more race results. If the proper fee had been paid, the bookmaker was told to wait on an open line. If the call had been through the switchboard, the key was left in an open position. If the call had come through one of the telephones, the telephone speaker was placed physically in one of several cushioned boxes which served to hold some half dozen phones and magnify the sound of Tollin's voice.

At the word from the catcher, Tollin announced in a loud voice, "They're off." Shortly thereafter he called out twice into each box, "The name of the winning horse is No. 3, John Doe." This was repeated by the switchboard operator. The keys in the switchboard were quickly closed, the telephones put back in their cradles, and Delaware was ready for another round.

If your people inspected that premise, what would you think that was? First of all: Do you have any knowledge of that?

Mr. HANSELMAN. On this particular case?

Mr. FOLEY. Yes.

Mr. HANSELMAN. Yes, I have some knowledge.

Mr. FOLEY. Is that operation in existence today?

Mr. HANSELMAN. I believe it is.

Mr. FOLEY. Could you call there this afternoon, Mr. Hanselman, and in effect get the results of races today?

Mr. HANSELMAN. As you may know, this specific case you are referring to has been before the courts and is currently before the State commission. The circumstances, as I understand it in this particular case, are that these facilities were provided to this customer some 10 years ago.

At that time the State of Delaware had no statute against aiding and abetting. They did have a law with regard to bookmaking. This outfit did not actually do any bookmaking. The matter was reviewed

at the time, as I understand it, with the attorney general; and it was decided that we would have to provide the service.

Subsequently in Delaware the law was changed to make aiding and abetting illegal. The telephone company then, with the attorney general of the State, proceeded to advise the customer that they were going to discontinue his service. He protested and the case came up before a court. I am not a lawyer, so I can't go into too much detail on this.

But we were enjoined by the court from discontinuing this man's service. I think the court indicated that the State commission should rule on it.

Therefore we at once took the matter up with the State commission and it is now before the State commission to provide us with a ruling on the matter.

The CHAIRMAN. Can you appeal from the decision of the lower court?

Mr. HANSELMAN. They gave us another recourse, which was going to the commission before the court would consider it further. I am getting a little bit outside of my field, Mr. Chairman, because I don't know the legal steps that are necessary. I am afraid I can't answer that too specifically.

But, as a layman, we were told that what we should do was to go before the State commission, which we did, and it is now on the State commission's calendar.

Mr. RODINO. Mr. Hanselman, you say this operation started about 10 years ago and this man Tollin evidently made his application for communications about 10 years ago?

Mr. HANSELMAN. That is right.

Mr. RODINO. What kind of an operation did he state that he was going to enter into at that time?

Mr. HANSELMAN. News and sports dissemination.

Mr. RODINO. Sports dissemination?

Mr. HANSELMAN. Sports news dissemination.

Mr. RODINO. Didn't this at that time give you an inkling of suspicion as to what this man was going to do?

Mr. HANSELMAN. Oh, yes, sir. But as I indicated, it was not an illegal use in the State of Delaware. We had taken the matter up with the attorney general of the State, as I understand it, and they indicated that we could not refuse service. You see, we likewise are required to provide service to customers; and we can't discriminate and give service to A and B unless we have some indication that the use is illegal.

Our source of authority on that would be the appropriate law enforcement officer—in this case the attorney general.

At that time, as I said, the State of Delaware did not have an aiding and abetting statute; and this firm did not do any bookmaking, as I understand it. What they did was solely give out racing news, which of course was given to bookmakers, as I understand it. But he was aiding and abetting bookmakers. Here again I am getting out of my depth from a legal standpoint because I am not a lawyer.

Mr. MEADER. Mr. Hanselman, I was interested in your statement that you are not a lawyer. Can you tell me, or are there some of your associates here who can tell me, what the requirement on the Bell System is for furnishing service? Can you discriminate between

customers and give service to one and not to another, as a common carrier?

Or are you compelled to furnish service if it is available to applicants who are otherwise eligible for service?

Mr. HANSELMAN. We are compelled to provide service to all proper applicants. The only real basis we have for refusing service is in accordance with this tariff provision which I read, that the service is furnished subject to the condition that it will not be used for an unlawful purpose.

Mr. MEADER. Suppose you refuse service. What recourse does the applicant have? Can he take you into court?

Mr. HANSELMAN. He can take us to court, and there have been cases where he has. He can go to the commission and take action with the commission. If the commission or the courts says that we have to provide service, that our judgment as to whether or not the service was to be used illegally was incorrect, we have to provide the service.

This has happened.

Mr. MEADER. In this specific *Delaware Sports* case, an injunction was issued against the discontinuance of the service?

Mr. HANSELMAN. That is correct.

Mr. MEADER. Can the applicant wind up with a money judgment against you for refusing service? Or does he have to pursue equitable rights? Or don't you know?

Mr. HANSELMAN. I have heard of cases where we have been subject to suit for as much as \$2 million for having discontinued service for a customer when we thought it was to be used for unlawful purposes and it turned out that it was not to be used for unlawful purposes. And, furthermore, in this case we had gone to the proper law enforcement officers.

They told us it was to be used for unlawful purposes.

Mr. CRAMER. Would the gentleman yield?

Mr. MEADER. I would just like to ask one other question. Then it appears to me that the telephone company is on the horns of a dilemma: you are required to furnish the service to proper applicants and yet, under this proposed legislation, you, by furnishing that service, might be subject to criminal penalties.

Mr. HANSELMAN. As the bill is presently stated, that is exactly right. In my testimony I indicate that this is a very, very serious problem from our standpoint.

Mr. CRAMER. Will the gentleman yield on that?

Mr. MEADER. Yes.

Mr. CRAMER. Isn't it true that the American Bar Association, in 1952, made a recommendation which in effect was incorporated in Attorney General Rogers' recommendation in January of this year that takes you off the horns of that dilemma, giving you the authority to withdraw services on the request of the local law enforcement authority? Isn't that correct?

Mr. HANSELMAN. That is correct, on the written request of the appropriate law enforcement authority. If they advise us, we then can take out the service and are not subject to action against ourselves for having done so.

Mr. CRAMER. Do you approve that approach?

Mr. HANSELMAN. Yes, I certainly do. In my testimony I indicate that legislation framed along these lines would seem to us in the Bell System to fully meet the conditions and the objectives that your committee has; and at the same time make it possible for us to function appropriately, without either making ourselves subject to many damage suits and putting our own employees in great distress by being subject to penalties and fines for reasons entirely out of their own province.

Mr. CRAMER. Even if the bill introduced by the distinguished chairman should become law and make the use of interstate communications for gambling purposes illegal, would you not still be on the horns of the same dilemma and suffer the same peril of determining by yourself, as a private enterprise concern, whether that statute had been violated in order to withdraw the services?

Mr. HANSELMAN. This is quite correct. In addition, the proposed bill includes terms involving the intent of the customer to use, which would be extremely difficult for us to go back into the customer's mind to find out what he intends to use. We would be in very serious jeopardy under those circumstances.

The CHAIRMAN. Intent can be spelled out from actions. It need not be your prying or boring into the minds of the customers. It is what they do from which can flow the conclusion whether or not they are using your facilities with an unlawful intent.

Mr. HANSELMAN. But the way this bill is written, we would be subject to these penalties; the common carrier would be subject to the penalties. This is what is of great concern.

The CHAIRMAN. I don't want to be dogmatic. I don't want to put any responsibility on you which would be undue or untoward or improper. We are conducting these hearings to find out all the facts, all the repercussions that might flow from the language that is used. This bill has been put up as a sort of a target for everybody to shoot at.

You have this situation with the Bell Telephone Co., a huge holding company with companies operating in the various States in the form of monopolies. It is along the monopolistic idea.

Mr. MEADER. It is a public utility.

The CHAIRMAN. It is a public utility, as the gentleman from Michigan indicated. You have exclusive franchises which render your companies impervious to any kind of competition.

If there is to be competition, the public service commissions of the various States will determine that. But in general you are rendered impervious to competition.

The rates are fixed which insure you a profit. There is little damage from losses because the public service commissions will see to it by upping rates so that you will not sustain any losses.

Now, do not those high privileges which are accorded to you—high privileges that have been accorded this vast holding company called the Bell Telephone System—do not they entitle the public to some assurance, some concrete assurance, successful enforcement assurance, that the wire services of your facilities will not be used in a manner that is contrary to public morals, the common welfare, and the security?

Isn't there something in the nature of an obligation on your side in that regard?

Mr. HANSELMAN. Yes. We fully recognize that obligation. We think the appropriate means of exercising that obligation is to have the proper and the appropriate law enforcement people tell us in writing that the use is illegal, where there is any doubt in the matter, because unless this is done we in effect have to do the investigating, Mr. Chairman.

We really are taking over some of the law enforcement authorities' prerogatives.

The CHAIRMAN. At that point, the law enforcement authorities are powerless because, as I indicated the other day, crime has become mobile. Crime transcends State lines, and the public enforcement authorities are powerless with present statutes to tell you whether or not there are these violations of law.

Their responsibilities apparently under the present statutes are ineffectively carried by the local public and police authorities. Therefore we want new laws to take hold of this situation. These new laws may place some kind of a burden upon you.

Your general statement doesn't carry conviction with me—your pontifical statement that you don't want your facilities to be used for any illegal purposes. That sounds very well, but what are you doing to implement that?

I think there must be something more than what you have already indicated to be done and must be done or should be done by the Bell Telephone System so as to help wipe out this syndicated crime.

Mr. HANSELMAN. Mr. Chairman, we agree with you exactly. We feel likewise that there is something more than can and should be done. But let me say, if the local law enforcement officers cannot determine whether or not it is illegal to use this service, certainly you wouldn't want us to make that decision.

The CHAIRMAN. That is true. But we are not remaining in the past; we are trying to go forward. We are trying to devise something for the future.

Mr. HANSELMAN. Sir, in my testimony I go on to say that we think appropriate action can be taken to reach these objectives. On page 5 of my testimony I make some specific recommendations. On top of 5 I say:

On behalf of the Bell System, therefore, I would like to recommend most strongly that any legislation on this subject should contain the following four provisions—

The CHAIRMAN. Maybe we are a little unfair to you. Perhaps it would be better to let you continue your statement and then we will propound some questions to you.

It may be that your statement answers a number of inquiries that are in the minds of the committee and the counsel.

Mr. HANSELMAN. I feel sure it does, Mr. Chairman. If I may continue, I would be glad to answer any further questions.

The CHAIRMAN. I think it would be well for you to continue.

Mr. HANSELMAN. I am reading at the top of page 3, where I stopped a few moments ago.

With regard to the specific provisions of H.R. 7039, I should like to note that it is limited in its application to transmission of gambling information through the use of "wire communication facility." It would be our recommendation that the bill not be so limited but rather

should be extended to include "any communication facility" which could be defined as follows:

"Communication facility" means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, and delivery of communications) used or useful in the transmission of writing, signs, signals, pictures, and sounds of all kinds by wire or radio or other like connection between points of origin and reception of such transmission.

In other words, we believe that any legislation enacted by the Congress with regard to this problem should apply to both wire and radio facilities and should not be solely limited to wire communication facilities.

The CHAIRMAN. I am sorry. I want to interrupt you there.

In other words, you feel any responsibility on the telephone company wire services, likewise the responsibility should be on wireless services, radio, and television?

Mr. HANSELMAN. Really what I am saying, Mr. Chairman, is that the Bell System in its day-to-day provision of telephone services, uses a very substantial amount of radio or microwave systems which carry almost half of our interstate long-distance telephone circuits. They are not in wires. They are microwave systems which send radio emanations through the air. So that, really, if this statement were not incorporated, an individual might be using microwave circuits and claim therefore, that he could not be convicted under what you propose later on.

I am just suggesting. This is not a major matter. I am sure you all agree with it. It is just the fact that the Bell System uses not only wire—and this is true of telephone communication carriers—they also use radio—both public mobile telephone service, microwave long-distance channels, carrier systems, and so on.

I am just frankly, extending slightly.

The CHAIRMAN. Then you feel—contrary to some testimony which we have received—that the use of wireless by telephone and radio should not be left to the Federal Communications Commission, to see that those wireless facilities are not used for illegal gambling purposes?

You feel that if there is to be any responsibility in the statute, with penalties, it should apply to all this media of communication?

Mr. HANSELMAN. That is right. Our ordinary, long-distance telephone service and teletypewriter service and other forms of service which we provide in the city, frequently uses radio channels and really, for any individual call, we have no knowledge which circuit is to be used; whether it is going to be a wire circuit or radio. So I am just suggesting that the statement be amplified to cover all.

The CHAIRMAN. Do you think your language is broad enough to cover all that?

Mr. HANSELMAN. Yes. The language which we propose, I think, will cover that.

The CHAIRMAN. It will cover television too, would it not?

You said signals and signs and writing.

Mr. HANSELMAN. I would assume so, yes. Yes.

The CHAIRMAN. Proceed.

Mr. HANSELMAN. Section 2 of H.R. 7039 prohibits and provides penalties for leasing, furnishing, or maintaining any wire communication facilities with the intent that it be used for transmission in inter-

state or foreign commerce of gambling information. It also provides similar penalties for one who knowingly uses such facilities for such transmission.

Under this bill it appears that the common carrier is responsible for determining whether the communication facility is being, or will be, used for illegal purposes. This actually is and should be the responsibility of the law enforcement authorities—not the communication carriers. But as the bill is written there is a serious question as to how far a common carrier must go to satisfy itself that a customer or an applicant for service has no "intent" to use it for illegal purposes.

For example, where an applicant for private line service is involved, the telephone companies for many years have scrutinized most carefully the proposed use of the service if the applicant is not already known to us. Where there is doubt as to the legality of use, the applicant is refused service unless the doubt is resolved. Even so a proper use may subsequently be changed to an illegal use, or an innocent error in judgment may be made initially by a communications carrier employee.

Furthermore, where the communication facility used is a message toll circuit which the customer has dialed directly, it is impossible for the communications carrier to know whether the "intent" of the use is legal or illegal. The carrier, as a matter of fact, does not even know that the call has been made until long after it is completed.

In either case, as the provisions of H.R. 7039 now stand, the management and employees of the Bell System are put in a position where they must be continuously fearful of fines and jail sentences if some customer does use any of our communication services for illegal purposes. I am certain such an enactment would have a most serious adverse effect on both the efficiency and morale of the entire telephone organization. I am sure it would be as abhorrent to the public as it would be to the telephone companies if these companies were required to assume functions of the properly appointed law enforcement authorities.

What is needed is a legislative framework which would prohibit the transmission of gambling information through the use of communication facilities, and would also contain in such a statute a procedure for cooperation between law enforcement authorities and the common carriers which would protect the legitimate interest of these authorities, the common carrier, and the person whose telephone service is affected.

On behalf of the Bell System, therefore, I would like to recommend most strongly that any legislation on this subject would contain the following four provisions:

1. A prohibition against the use of, or the leasing, furnishing, or maintaining of any communication facility which is or will be used for the transmission of gambling information in interstate or foreign commerce.

2. A requirement that when any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce, it shall discontinue

within a reasonable time, or refuse, the leasing, furnishing, or maintaining of such facilities.

3. A provision that no damages, penalty, or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with such notice from such a law enforcement agency.

4. A provision that nothing in this legislation should be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed or should be provided.

These recommendations provide a reasonable framework to create the statutory prohibition against the transmission of gambling information. They recognize the importance of cooperation between law enforcement agencies and the common carrier. They protect the common carrier from damage or penalty as the result of such cooperation. They protect the rights of the individual whose telephone service is affected.

These principles were considered by the American Bar Association Commission on Organized Crime and were all contained in the "Model Antigambling Act" recommended by this commission in its report of September 2, 1952.

In 1954, the Department of Justice, following discussions with representatives of American Telephone & Telegraph Co., Western Union Telegraph Co., and the United States Independent Telephone Association recommended that all of these provisions be incorporated into legislation. The Senate Committee on Interstate and Foreign Commerce unanimously recommended a bill, S. 3542, which followed these recommendations of the Department of Justice. This bill was accompanied by Senate Report 1652, 83d Congress, 2d session.

The same approach has been followed in various bills which have been introduced since 1954. Currently these principles are included in H.R. 7031 which is pending before the House Committee on Interstate and Foreign Commerce and in S. 528 which is pending before the Committee on the Judiciary of the Senate.

In summary, I respectfully request this committee, in formulating legislation to handle the problem of transmission of gambling information in interstate and foreign commerce to follow the approach which I have recommended. It is based upon sound principles and is consistent with the practical operations of this country's communications system. It follows closely the present procedures for our cooperation with law enforcement authorities and reflects the recommendations of the American Bar Association Commission on Organized Crime and the position of the Department of Justice as expressed in its recommendations in 1954.

Mr. Chairman, before closing this presentation, I would like to comment briefly upon the proposals of H.R. 3022, which has been incorporated as title 4 of H.R. 6909, now pending before this committee. This legislation provides criminal penalties for a communications carrier or its employees in providing communication service to a person they have reason to believe should be registered under the gambling tax provisions of the Internal Revenue Code, unless the Department of Justice has been informed of the circumstances giving rise to the belief. I have already expressed the view that it is not sound public policy to place a law enforcement function upon the communications

carrier, and this consideration would also extend to the individual employees of the carrier, at the present time; and speaking for the Bell System, any employee who knowingly assists in providing telephone service to gamblers or bookmakers would be subject to dismissal by the telephone company. The severity of this penalty provides whatever incentive is necessary to insure that suspicious circumstances are reported by Bell System employees to their supervisors, who in turn bring such information to the attention of the appropriate law enforcement agencies.

In my opinion, there has been no indication of the need for criminal penalties under Federal statutes, against either the communications carriers or their employees. To the contrary, there is already existing a high degree of cooperation between the communications carriers and law enforcement agencies which should be recognized and given legislative sanction, as I have recommended in my previous comments about H.R. 7039.

For these reasons, we do not believe that the enactment of title 4 of H.R. 6909 is either necessary or desirable.

Thank you.

The CHAIRMAN. On page 5, where you give your recommendations, you make a good approach. You make a good approach, and I personally commend you for those suggestions; but I wonder whether you go far enough. In a way, your Bell System says, "We are going to stand above the difficulty. We are going to remain aloft," as it were. "We are going to draw our skirts around us. We don't want to touch this at all," originally. You originate those suggestions. No action. You assume no responsibility. In a prophylactic way, you give no assurance at all. You simply say, "We will do nothing until the law enforcement people or some entity, or somebody, makes a complaint to us; until the law enforcement agencies may act; until a complaint is filed." A great deal of damage may be done, don't you think—and this is probably repetitious—that something more must or should be done by the telephone company with its vast ramifications of facilities all over the land to aid the enforcement agencies here, and aid the Government, in trying to stamp out these prairie fires of sin and violence and syndicated crime?

Don't you think that it is more of a responsibility on the telephone company than you indicated, good as those indications are?

Mr. HANSELMAN. As I indicate, Mr. Chairman, we do go beyond this, as a practical matter, on a day-to-day basis. You recall, I indicated that we carefully screen all applications for service. We train our service representatives and our installation people to observe conditions where they visit customers' premises, and let me say that our employees makes many visits in the course of the year on customers' premises, primarily for two reasons.

(1) We have roughly 65 million telephones in the Bell System in the United States. We make some 15 million connections, new connections, each year. We also discontinue roughly 12 million for a net gain of something in the order of 3 million; but this means we actually deal with one-quarter of our telephones each year, in connecting or reconnecting, moves, changes, and all the other circumstances that go with the ebb and flow of the economic movement in this country.

(2) Our repairmen visit, on the average, every telephone installation once every 2 years. Now, with these circumstances, and as I have already indicated, we report any cases to the proper law enforcement authorities which given us any real suspicion that the telephone service may be used for illegal purposes, and if the evidence is obvious, such as I indicated, where we cannot get access to the facilities, or we see and find the telephone facilities have been moved or changed—the wiring changed—we at that point discontinue the service.

So that I really do believe, sir, that we do go far beyond the statement that I made on the legislation, but we believe that where there is any question on the use of the service, that it is the person who is transmitting the illegal information that should suffer the penalties; that the appropriate law enforcement officers should so advise us that there is an illegal use, and where we have such information, we would discontinue the service.

The CHAIRMAN. I understand that, and you said that before.

Can you give us, just roughly, how many services you have canceled because of illegal operations by way of catering to syndicated betting?

Mr. HANSELMAN. We have information—we had information—that is now several years old; perhaps longer than that. It is not a matter of current information that we keep regularly, but we made a check for 2 successive years, or asked the associated companies to make such a check, and as I recall the figures, we refused service to some 10,000 applicants for service, and included in that figure are those that we discontinued because there was illegal use.

Now, it is a substantial number of discontinuances.

The CHAIRMAN. That includes those whom you refused in the inception, and those whose licenses or privileges you have canceled?

Mr. HANSELMAN. That is correct.

The CHAIRMAN. 10,000 for what period of time?

Mr. HANSELMAN. In a year.

The CHAIRMAN. In 1 year?

Mr. HANSELMAN. Yes. We made this check for 2 successive years. It ran around 10,000.

Mr. MEADER. You are not including in that figure of 10,000 refusal to provide service on the grounds of credit or anything like that?

Mr. HANSELMAN. No, sir. This is just for illegal use.

Mr. TOLL. May I inquire, did you keep a record for 1960 on how many suspicious cases you reported to enforcement officials?

Mr. HANSELMAN. No. I have no such information.

Mr. TOLL. Can such information be obtained? Your reports are obviously in writing, are they not, to enforcement officials?

Mr. HANSELMAN. Yes. I believe this information can be obtained. I really, frankly, would have to look into it but this is not information which we have any reason for keeping currently. We did keep this information, especially for this 2-year period, and in answer to the chairman's question, that is as much information as I have with regard to your question.

Mr. TOLL. It would point up those cases that you reported as suspicious, where no action was taken by the enforcement officials?

Mr. HANSELMAN. What you are suggesting is that we have, or tried to obtain information, on cases which we referred to law enforcement officials, and where we, No. 1, discontinued the service; and No. 2, were

told not to discontinue the service because the law enforcement officials thought the service was not illegal?

Is that what you mean?

Mr. TOLL. Where they thought they did not want to, even though it looked suspicious to you?

Mr. HANSELMAN. We would not know, of course, why the law enforcement people felt one way or another. They would either tell us yes, take it out, or no, don't.

Mr. TOLL. You are the first source of information to the law enforcement officials on which they might act if the evidence turned out to be suspicious?

Mr. HANSELMAN. No; I think not. The law enforcement officials, on a day-to-day basis, presumably, for example, on misuse of service; we are not by any means the first source.

In fact, we on occasion get information from law enforcement officials about customers to whom we are giving service, where we had no idea it was being misused, but they advise us this is being used for illegal purposes and we forthwith discontinue the service.

It is the law enforcement people who are the primary sources, not the telephone company.

The CHAIRMAN. I just want to get this clear.

You spoke of 10,000 cases where there was illegal operation, and in those cases you either refused to give service or you canceled service already arranged for.

Would they involve illegal operations of one source or another?

Mr. HANSELMAN. That is correct.

The CHAIRMAN. That is in a period of 2 years.

Mr. HANSELMAN. 10,000—we made a check for 2 successive years, and each year the total number was approximately 10,000 cases.

The CHAIRMAN. What years were they?

Mr. HANSELMAN. It was in the early 1950's. Maybe 1951, 1952, 1953. Somewhere in that area, sir. I don't really recall specifically.

The CHAIRMAN. Is there any way of determining that situation later?

Mr. HANSELMAN. We would have to, I think, start a new study, which is what we did at that time. We asked our companies to keep a special record of cases which were not provided with telephone service because of illegal use, either at the time the applicant asked for service or subsequently, after service had been rendered for some period of time. This would have to be done in the future, as I see it, because we could have, otherwise, no sound basis of having total figures which are at all accurate.

The CHAIRMAN. Have you brought down the 10,000 figure to cut-offs, as compared to refusal of services?

Mr. CRAMER. How many cutoffs have you had?

Mr. HANSELMAN. My recollection is that the bulk of the cases were refused. Refusal of service, when an applicant came in. It might be roughly in the order of two-thirds initial request for service, where we turned them down, and one-third cutoffs of service, but please don't hold me to that because I do not have the figures in mind, but refusal is in the order of that magnitude.

Mr. MEADER. Mr. Hanselman, is this information which you have just given the committee contained in some written report or memorandum?

Mr. HANSELMAN. Yes. It was included in testimony which I gave in connection with Senate bill 2116 on September 20, 1951, on page 2:

There have been over 10,000 cases in the last year alone where service was disconnected or applications for service were refused by the associated companies of the Bell System.

Mr. MEADER. I know your testimony is essentially the same today as it was 10 years ago.

Mr. HANSELMAN. Yes.

Mr. MEADER. But do you have these figures collected in a report or memorandum which you could furnish to our committee to show, for example, what Mr. Cramer just asked you about?

How many of those 10,000 were refusals and how many were cut-offs?

Mr. HANSELMAN. I am sure I could provide that information. I do not happen to have it here.

The CHAIRMAN. We would be very glad to see it.

Mr. CRAMER. Isn't it true that all of those presently are done under your own power?

Mr. HANSELMAN. Yes. Wait a minute. Excuse me. No.

In part; you see, some of these have been cases where a law enforcement officer has come to us and told us it was being used illegally and we therefore discontinued the service.

Mr. CRAMER. You say, as a matter of practice, you discharge a person who has failed to advise you, or a supervisory employee, that this facility is being used for illegal purposes? How many people have you fired under that company procedure?

Mr. HANSELMAN. Well, let me say this—

Mr. CRAMER. Or reprimanded, or otherwise?

Mr. HANSELMAN. With regard to that question, No. 1, the Bell System people in our installation and repair services, and in our business offices, are very carefully selected. We select only something like 1 out of 20 applicants, who come to the telephone company to work for the telephone company. We review each applicant very carefully because of the nature of the work that our installation people must do. They are on customers' premises. They must meet a great many very special requirements because of the confidential nature of the telephone service; so that we have a very highly selected group of people.

Mr. CRAMER. How many have been fired?

Mr. HANSELMAN. Pardon?

Mr. CRAMER. How many have been fired, though?

Mr. HANSELMAN. I do not have any figures, but I have checked on this and the number actually is very small because the big bulk of the Bell System employees are honest, straightforward people; but every once in a while some individual succumbs to temptation, and when we get the evidence on it, the person is summarily fired.

Mr. CRAMER. But under present circumstances, even if an employee does advise a supervisor, there is no statutory or other duty imposed upon your company, or the telephone companies, to submit that information to a law enforcement authority, is there?

Mr. HANSELMAN. None that I know of.

Mr. CRAMER. That is right.

Mr. HANSELMAN. But there is no reason, and there is every reason to the contrary, for the employee to report it.

Mr. CRAMER. To the supervisor?

Mr. HANSELMAN. To the supervisor.

Mr. CRAMER. I am talking about the supervisor or the company official reporting it to the law enforcement authorities.

Mr. HANSELMAN. Yes. We do that. That is part of the company's practices.

Mr. CRAMER. But there is no statutory or procedural requirement for it, is there?

Mr. HANSELMAN. None that I know of.

Mr. CRAMER. Then why would you oppose a proposal—perhaps the proposal in title 4 in the omnibus bill is a little harsh—but why would you oppose some type of imposition of duty on the part of the company to make that information available to the Department of Justice?

Mr. HANSELMAN. We do not object to provide information which we have but to put on us the burden of investigating, of looking into the intent—

Mr. CRAMER. No, no, no. The standard that is proposed in title 4 is the same that you presently acknowledge. If the company "has reason to believe," then shouldn't there be some responsibility on the basis of their "reason to believe" that that information be made available to some law enforcement authority and the provision that it be made available to the Department of Justice?

Mr. HANSELMAN. The problem there, sir, is that how far does the telephone company go in determining whether it should have "reason to believe."

Mr. CRAMER. How far does it go now?

Mr. HANSELMAN. It goes—if it has indications in accordance with our present practices, which are very thorough—

Mr. CRAMER. Go ahead.

Mr. HANSELMAN. Which are very thorough, if we have an indication that the service is to be used illegally, we do provide the information through company lines of supervision to appropriate law enforcement authorities, or we, on our own initiative, may discontinue the service, if the evidence is obvious, but we get into this question as to whether we have reason to believe or not. This gets to be a problem as to how far we should go in individual cases. This is exceedingly difficult. We have 225,000 employees that might have something to do in this general connection. We do have practices which are followed and supervised very carefully, to make sure that we do everything practical in this connection, but if we come into a situation where there is very substantial penalty in the way of fines or imprisonment to our employees, if they should have had reason to believe that it was being used, and did not use the right judgment or whatnot, this frankly would have a tremendously unfavorable effect on our employment procedures.

Mr. FOLEY. Mr. Hanselman, do you recall when the Public Utilities Commission of California issued its order to all public utilities that you were authorized to refuse, discontinue, or disconnect service whenever you had reasonable grounds to believe that the facility was being used for illegal activity? What was your experience under that order?

Mr. HANSELMAN. Frankly, I am not familiar with that particular order. Is that a recent one?

The CHAIRMAN. Will you check?

Mr. FOLEY. Will you check and find out, please?

Mr. HANSELMAN. Surely.

Mr. FOLEY. The report was very effective in striking at bookmaking in California. A number of the bookmaking establishments closed up.

Mr. ROGERS. Mr. Hanselman, on that point, the yardstick as to whether or not you had reason to believe, would be a problem for the court and jury.

What is it in this reasonable belief thing that frightens you with respect to the position of your employees and your officials?

Mr. HANSELMAN. Just the very point you make. This is subject to a court and a jury or one or the other. Our employees would be continually threatened with a possibility, if, in their judgment, they should have had reason to believe or they did not properly do that, they are subject to court action.

Mr. ROGERS. The question would not be whether, in their judgment—the question would be in the judgment of a tribunal, whether they had reason to believe; and this, I think, would strike at the very heart of the problem, don't you?

Mr. HANSELMAN. No, sir; because an employee would not have any idea of how the jury would react to a particular case. As I mentioned, I believe, before you came in, we have had occasions where we have discontinued service.

Mr. ROGERS. Well now, would not the same rules applicable to all criminal cases apply to this violation, if it became Federal law? Would not the yardstick of finding of a defendant guilty beyond a reasonable doubt apply? Would not the rights of the individual defendant be safeguarded in the same fashion as any other defendant?

Mr. HANSELMAN. That may be so, sir, but we are faced with the problem of determining how far we should go to see whether or not the service is going to be used illegally. We have to have reasonable information that it is to be used illegally. All right. How far should we go to determine whether in fact, this customer is going to use it illegally. If we had to go, really, to determine this, it might lead us into a requirement where we would have to listen to telephone conversations, which we certainly would not want to do.

Mr. ROGERS. I don't think that is purpose of the legislation. I do not think that the telephone company would be under any obligation to do investigative work under this section. The issue would be, did you have reason to believe that it was being used for illegal purposes, and then the obligation would become yours, to refer this to a local enforcement agency or the Department of Justice.

Now, you would not be required to do any investigative work here. If anything was brought to your attention, that led you to believe, as a reasonable man, that the telephone was being used for gambling, then you would be under a duty to report it.

Now, I don't see any real problem.

Mr. HANSELMAN. Well, sir, this is exactly what I am suggesting.

On page 5, I do suggest just as you have stated, that if law enforcement authority has information which gives it to us, or we have—

Mr. ROGERS. Forgive me for interrupting. That is not the issue here. The issue is, when you find something out on your own, without having been notified by a law enforcement agency, and you have reason to believe, and you do not report, why should this not be made the subject of a crime?

Isn't that the issue, Mr. Hanselman?

Mr. HANSELMAN. Yes, but we do report these cases where they have, from the normal contacts with our customers, an indication that the service is to be used illegally, but I must say that this creates a problem.

We here may say, that, well, if you have made a reasonable investigation, that is all right. You won't be subject to penalties, but the fact is that we cannot tell in advance how far we should go in order to avoid prosecution or trouble under such a statute.

That is why we suggest the proposals which were recommended by the American Bar Association and the Department of Justice, which really sets a proper framework.

Mr. ROGERS. Are there not statutory requirements with respect to your obligation to check into personnel?

Mr. HANSELMAN. Are you asking me a question?

Mr. ROGERS. Yes. Are there?

Mr. HANSELMAN. Are there statutory requirements that we check into our personnel? None that I know of.

Mr. FOLEY. But on that point, is this not true—that in Florida and in Pennsylvania there are criminal statutes making it unlawful for any public utility to provide private wire knowingly, of course—provide a private wire, which is used in furtherance of gambling?

Mr. HANSELMAN. Yes. That is exactly right. We would have no trouble with that sort of statutes for this reason. In those two States—it might be in another State—the telephone company, in connection with all private line services which are to be used for news broadcasting, sports events, and so forth, the customer signs an affidavit that it will not be used for illegal purposes, and this is exactly what we think is perfectly reasonable.

Mr. FOLEY. And in Pennsylvania, does not the statute further provide that you must submit the contracts to the State public utility commission?

Mr. HANSELMAN. True. That is perfectly all right. We do that, and have done it, but this is quite different from the proposal as I understand it here.

Mr. FOLEY. Let me ask you this. In Oklahoma, it is not clear to me whether it applies to you, the telephone company, as a common carrier, or is limited to the telegraph company. However, there is a statute in Oklahoma that provides that a company or an employee who knowingly transmits or delivers any message to house, room, or a person engaged in a place which places bets on horse races, they may be subject to penalty.

Do you know whether that would cover you, or is it limited to telegraph companies?

Mr. HANSELMAN. I don't see how it could apply to the telephone company. It does not provide the message. It has no knowledge of the contents of any communication which goes through its lines.

Mr. FOLEY. Knowing these arrangements for delivery of messages, you could be covered if it were shown your employee was making book and using a telephone in your office.

Mr. HANSELMAN. You are now referring to one of our employees doing it?

Mr. FOLEY. Yes.

Mr. HANSELMAN. I don't know of any such cases. I do not believe that this applies to us. I do not believe it has been so construed but, then, I am not certain of that.

Mr. CRAMER. As I understand it, you would have no objection to the bar association's recommendation that would permit you to cut off services on the premises, when investigated by any local or law enforcement authority.

Second, that would give you the other protections you mentioned and would require a registration with regard to direct line services with the Commission, where such facility is or will be used for the transmission of gambling information.

Now where that line involves interstate or foreign commerce, in connection with transmission of news or other information pertaining to sporting events or contests, wherever the line is to be used for that purpose, the recommendation was that they shall file with the Federal Communications Commission an affidavit that it is to be used for such purposes, and not for gambling.

You don't have any objections to that.

Mr. HANSELMAN. We have no objection to a provision which requires us to get an affidavit from a customer in connection with a private line service.

Mr. CRAMER. Then you would have no objection to the proposal in title 4 of 6909 that would require a similar affidavit to be filed with the Attorney General where someone has filed an application for a gambling stamp.

Mr. HANSELMAN. This is a gambling tax arrangement that you are talking about now. Could you repeat your question? I am not sure I got the impact of it.

Mr. CRAMER. Where a gambler registers under the present existing Federal statute concerning the gambling stamp tax, requiring him also to file an affidavit that he does not intend to use communications for gambling purposes.

Mr. HANSELMAN. Well, we would have no knowledge as to —

Mr. CRAMER. He does not file it with you. He files it with the Attorney General.

Mr. HANSELMAN. Oh, this has nothing to do with us.

Mr. CRAMER. It has nothing to do with you people.

Mr. HANSELMAN. If this is what you think is appropriate, we certainly would have no objection.

Mr. CRAMER. You would have no objection?

Mr. HANSELMAN. That is correct.

Mr. CRAMER. Now, as I understand it further, you would have no objection to the bill by the chairman, recommended by Attorney General Kennedy, making it illegal to use the communications but you do object to making it illegal for the company to provide such facilities; right?

Mr. HANSELMAN. We certainly have no objection for a bill which would make it illegal for a person to use our facilities to transmit gambling information.

Mr. CRAMER. Which is the second sentence of the Attorney General's recommendation.

Now you do object to placing any responsibility on the company, either in the form of the first sentence of the Attorney General's recommendation, as making it a crime; or secondly, imposing any responsibility on the employees to report this information which "they have reason to believe," to any law enforcement authority?

Mr. HANSELMAN. That is correct.

Mr. CRAMER. So long as there is a penalty provided?

Mr. HANSELMAN. That is right.

Mr. CRAMER. You would have no objection to their being required to make such information available, similar to the bar association recommendation?

Mr. HANSELMAN. No. The bar association recommendation, we think, is quite appropriate, and if we got specific information we would expect to be required to discontinue the service, if it was to be used illegally.

Mr. ROGERS. Suppose you did not? Suppose you did not? Suppose an employee did not? Then where would that leave the purpose of all of this here, with respect to stopping of syndicated gambling?

Mr. HANSELMAN. Suppose we did not discontinue service after we were asked by a law enforcement officer?

Mr. ROGERS. No. Suppose you did not discontinue service after you had reason to believe. The question now is, What is the obligation of the telephone company, and to what extent is the telephone company willing to pick up its obligation? Suppose, now, you had—you or your employees had reason to believe. Is it your position that the mere firing of the employee would be sufficient?

Mr. HANSELMAN. Would be sufficient to——

Mr. ROGERS. To help us work out our purpose here, to stop syndicated gambling.

Mr. HANSELMAN. Well, sir, I still am sorry but I have grave trouble with this question of reason to believe. You speak of this fairly lightly or indicate, perhaps, that this is something which a court or jury should decide but I can just see, in the very nature of this case, we would be continually in trouble trying to determine how far we should go.

This question of "reason to believe" is quite a wide area of judgment and after all, we have the sort of people working in our business offices that cannot be expected to be experts like the group sitting here. As a matter of fact, most of our service representatives are young girls from junior college. They might be your daughter or mine—many of them are—and to expect these girls to carry the burden of determining whether they properly have reason to believe this is illegal, is really a troublesome factor.

Mr. ROGERS. Just one more question. The question is not whether they properly have reason to believe, because nothing further is required here, except notification.

There is no mandate here that you become an investigating agency. It simply becomes a matter of notifying the authority and for failure to do that, when there is reason to believe, it becomes a crime.

Now, if an employee should have doubt about whether there was adequate reason or inadequate reason to believe it seems to me that the reasonable thing, if I may use that word, would be to report it, and thereby discharge his or her responsibility completely under the law.

Isn't that a fair statement?

Mr. HANSELMAN. Yes. That is a fair statement, but suppose the employee did not go as far as he or she might have, innocently enough. These people, as I say, are not expert law enforcement authorities, and a case could be brought up, and we would be greatly concerned that our people would be subject to court action because they, for one reason or another, did not go as far in their inquiries, or did not pursue some particular line, and somebody in retrospect could say, well, you should have been smart enough to know this meant this, and therefore, you should have had reason to believe, and therefore, the service should be discontinued.

The CHAIRMAN. Mr. Hanselman, you see a crime committed. You, as a citizen. A girl is raped; a house is robbed; an attempt is made to kidnap a child. As a good citizen, if you had that knowledge, don't you think you should report that to the police?

Mr. HANSELMAN. I certainly do.

The CHAIRMAN. Now, you have 10,000 cases, on your own admission, occurring yearly, where your services are used illegally. In how many of those cases, if at all, did you report what you determined to be illegal operation to the local police?

Mr. HANSELMAN. I cannot answer the question. We have no information but I would say in a substantial number of them because if the case was one where the customer had service, and through our installer, or through some other reason our people had some indication that the service might be used illegally, we would report that to the law enforcement officer.

The CHAIRMAN. You reported a substantial number of those 10,000 yearly. Suppose there is a different management—there is a different point of view—and he feels that it would be converting the telephone company into an enforcement agency to report that. Therefore, orders are issued not to report anything of this sort to the local peace or enforcement officers.

Now, don't you think that the choice should not lie with the telephone company? Don't you think there should be some obligation embedded in the statute to compel you to do it?

Mr. HANSELMAN. Yes, but I believe that should primarily come from the law enforcement people. They are the ones who should look into this case.

The CHAIRMAN. They don't know. You have the means of knowing better than they. You have already indicated that you have the means of knowing at least 10,000 cases a year—maybe more. Don't you think there is some obligation on your part or should be some obligation on your part, that it be embedded in the statute requiring you to submit that information to the local police officer?

Mr. HANSELMAN. Well, sir, let me say this. We are, as I stated in the outset, most anxious to cooperate with the viewpoint of this group in taking appropriate action against gamblers.

Now, I have expressed my concern that if legislation is stated in such a way that our innocent employees can get into difficulty because

they did not take what in retrospect or with the benefit of hindsight, might have been better judgment, this would concern us.

Beyond that, this is what my major concern is—and if the legislation were such that it did not impose any undue penalties or cases where we were not really in a position to determine whether the service was being used illegally—

The CHAIRMAN. In other words, cutting down the many words that you uttered, the answer is that you feel that there should be no legislation involving requirement on your part to disclose any information. That is your answer—other than of course, you are against sin. You are for motherhood and things of that sort.

Mr. HANSELMAN. No, sir. I think we go, really, far beyond that.

The CHAIRMAN. When it comes to implementing your being against sin and against syndicated gambling, and we ask you whether or not you are willing to have embedded in the statute a simple requirement that you are simply to make a report of your findings as to the illegality, you demur. I don't see that is a fair attitude to take.

Mr. CRAMER. Will the gentleman yield on that point?

The CHAIRMAN. Let him answer that, first.

Mr. CRAMER. Excuse me.

Mr. HANSELMAN. What I would really like to say is that again, we are most anxious to cooperate in every way we can. If we can make reports available that come to us, we would be glad to make those available to others, if this is what the legislation calls for but we would be very much concerned if, through the interpretation of any legislation, we were required to really assume some of the functions of the law enforcement people. This, I think, you can well understand, we don't want to be put in that predicament.

The CHAIRMAN. I don't think it makes you an agent of the law enforcement agency. You simply are the conduit through which information is delivered to the law enforcement agency.

Mr. HANSELMAN. If that is so, I would assume we would have no objections to it. Basically, as I stated, we have these two major concerns.

Mr. ROGERS. Well now, that is exactly what we have been talking about, Mr. Hanselman, and I take it now, that in addition to your obligation, you would have no objection, I take it, to having this made into a crime—the failure to report when you have reason to believe. Is that correct?

Mr. HANSELMAN. I would much prefer that such legislation not be enacted for the reasons that I have given. However, if in the view of this committee, this seems to be the only way to deal with this, well, that is it. I really think that there is no need, there is no indication that telephone company employees or the telephone company people should be subject to criminal prosecution in view of our past history; our fully cooperative action; and, I think, the fine procedures that we have, to avoid giving service to gamblers.

Mr. ROGERS. Incidentally, in fairness to you, Mr. Hanselman, I know of no other attitude. I don't suspect another attitude, but that is not the issue here.

The issue here is whether we are going to have a full and complete spectrum of statutes that will help us to enforce these antigambling measures, and here is where the question resolves itself as to whether

or not the telephone company is willing to pick up its share of responsibility without any reflection on your *modus operandi*; without any reflection on your manner of selecting personnel; or without any reflection based upon previous experience; and I think this is a simple issue.

Mr. HANSELMAN. Well, if what you are saying is that each case where we believe that telephone service is being used illegally, it be reported to some law enforcement authority, we would have no objection to that.

Mr. ROGERS. And, for a failure to so report—would you have objection to criminal enforcement?

Mr. HANSELMAN. I think this would be very troublesome, sir.

Mr. ROGERS. Then we resolve ourselves again to the issue of how much, if at all, the telephone company wants to pick up the broad part of the broad responsibility.

Mr. CRAMER. Will the gentleman yield?

Mr. ROGERS. Yes, I yield.

Mr. CRAMER. The bar association's recommendation relative to your facility, providing information to law enforcement officials, carries no penalty for failure to do so. Isn't that correct?

Mr. HANSELMAN. I believe that is true.

Mr. CRAMER. All right, now. The proposal in title 4 contains a criminal penalty for failure to do so. Let's assume that the criminal penalty were taken out and I understand you would be willing—the company is—to accept the responsibility to report this information.

Mr. HANSELMAN. That is correct.

Mr. CRAMER. Then you have it working both ways. They report to you; you report to them.

Mr. HANSELMAN. That is correct.

Mr. CRAMER. But you object to criminal penalties.

Let me ask you this: Let's assume you failed to do it in an instance where you should have done it. Is there any way that the company can be brought to task for not doing so? Does the Federal Communications Commission, does anyone, have jurisdiction to punish, No. 1, your failure to cut off the services if requested by local authority; and the reverse, your failure to provide information to the authorities?

Mr. HANSELMAN. Here again, we are getting into something which is close to a legal statement which I am not competent to give but I believe this is so—that if any of our people have connived or provided telephone service illegally to a gambler—

As I was saying, if one of our employees has knowingly aided and abetted a gambler by providing him with service, I believe there are currently statutes which make or provide for criminal penalties for our employee who does take such action.

Have I made my point clear?

Mr. CRAMER. In other words, you think that the employee under the aid and abetting statute, might, under existing law, be subject to prosecution?

Mr. HANSELMAN. That is right. If he knowingly aids and abets a gambler by providing facilities or whatever the illegal action on his part is, I would assume that he is guilty as would be anybody who aids and abets any other criminal.

Mr. CRAMER. Isn't that precisely what we are providing for? Doesn't it provide for aiding and abetting?

Mr. HANSELMAN. No. I think there is a real difference. I think that in the case which was cited, we would be subject, or our employees would be subject to criminal penalties because they did not have reason to believe in a particular case, that it was for use, for illegal purposes, and therefore did not report it.

Mr. ROGERS. That is not the case. The case is when you or your employees do have reason to believe, and you do not report, that is when the law would come into play.

Now, perhaps we are belaboring this thing. I want it crystal clear, this does not involve any investigative process on your part. If you have knowledge, and if you have reason to believe that someone is using a telephone for illegal purposes, then your duty would be clear to report. Your obligation would be fully discharged; but for a failure to do that, then you would be guilty of the criminal enforcement.

Mr. HANSELMAN. If that is all that is involved, we would be perfectly willing to report such cases, but the indication as to what investigative action, we say here—you may say it and I may say it—but subsequently this gets enacted, and gets before a court and a jury. This may be very troublesome to interpret.

Mr. ROGERS. We would make sure that the legislative history would be specific.

Mr. HANSELMAN. All right. If this were so, we certainly would not have any objection to it.

Mr. DONOHUE. In other words, you would use the same reasonable grounds to refuse service that you now use.

Mr. HANSELMAN. All right, if that is all that is involved, this would be all right; but as this act is written, it could be interpreted in many ways which would be exceedingly difficult for us.

Mr. DONOHUE. It is my understanding that this provision has to do with your failure to report. You now wait until the law-enforcement authorities bring these cases to your attention.

Mr. HANSELMAN. Oh, no, sir.

Mr. DONOHUE. When you have reasonable grounds to think that your facilities are being used for illegal purposes, you now discontinue.

Mr. HANSELMAN. That is correct.

Mr. DONOHUE. But you do not report all of those cases.

Mr. HANSELMAN. That is correct.

Mr. DONOHUE. To law-enforcing authorities; but you do not have any objection to having a provision in the law requiring you to report to them all of these cases where you disconnect the line?

Mr. HANSELMAN. No. We would have no objection to that, as I already stated, if it has these provisos that you indicate.

The CHAIRMAN. I thank you very much, sir, for your very, very important testimony. We will take everything you say into deep consideration. The committee will now adjourn until 1:45. I want to express to the members that we will have to testify before us, the district attorney of Queens County, N.Y., who will have apparatus here to show us how information is given concerning races. He will give us firsthand information as to how that is done; so that we will

have to be here at quarter to 2, and I ask the members to be here promptly.

JUNE 8, 1961.

HON. EMANUEL CELLER,  
*House Office Building,*  
*Washington, D.C.*

DEAR CONGRESSMAN CELLER: On Wednesday, May 24, 1961, during my testimony before Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives, I testified with regard to legislation relating to organized crime. During my testimony I was requested by you to furnish additional information with regard to two matters, which I am glad to now bring to your attention as follows:

1. A request was made to furnish information which would show the number of applications refused and the number of telephone stations disconnected in the special study made by the Bell System in 1951. I am attaching a table, marked "Exhibit A," which shows, for the year 1950, the number of telephones disconnected and the number of applications for telephone service which were refused because of information or indications that telephone service was being or would be used for illegal gambling purposes.

As I indicated to your committee, no Bell System information on this matter has been assembled since that time. You will note, the data for 1950 is reasonably complete. However, as is stated in the attached exhibit A, some of the data is partially estimated. Also, the total shown for applications refused is probably understated because the information was not available in four of the operating companies of the Bell System.

About half of the companies of the Bell System also provided information for 1949 and for these companies, the data is comparable with the 1950 data shown on exhibit A.

2. A further request was made to provide information with regard to experience under a decision issued by the California Public Utilities Commission on April 6, 1948. This decision, No. 41415, requires a communication utility subject to the jurisdiction of the commission to discontinue service to a customer and to refuse to establish service for an applicant when the utility has reasonable cause to believe that the service is being or will be used to violate or to aid and abet violation of the law.

Under the decision a written notice of illegal use to the utility from a law enforcement officer constitutes reasonable cause to disconnect or deny service. A person aggrieved by action taken pursuant to the decision may file a complaint with the commission requesting an order for installation or restoration of service. Upon proper allegations a complainant may obtain from the commission a temporary injunction ordering reconnection of service pending a hearing on the merits. The commission grants such interim relief in a majority of cases, generally issuing its temporary order a short time after filing of the complaint.

After the utility has filed its answer, a commission examiner hears the matter. In most cases the law enforcement agency whose written notice to the utility caused the disconnection or denial of service appears as an intervener and offers evidence going to the merits of the case. The Pacific Telephone & Telegraph Co., which is the Bell-operating company in California, generally confines its defense in such cases to a showing that it received such written notice and, therefore, had reasonable cause to disconnect or deny service.

If the commission finds for the complainant, the temporary injunction is made permanent, or if there has been no temporary injunction issued, an order is made requiring the utility to furnish service. If the commission finds that the service has been used for an illegal purpose, it dissolves the temporary injunction, and dismisses the complaint.

To protect the utilities from suits for damages, decision No. 41415 provides that the procedure for making a complaint to the commission as set forth above is the exclusive remedy of an aggrieved customer or applicant for service.

The following is a tabulation, by years, of the number of complaints for

restoration of telephone service filed against the Pacific Co. since the commission's decision was issued on April 6, 1948:

1948-----	0	1955-----	37
1949-----	107	1956-----	57
1950-----	5	1957-----	43
1951-----	20	1958-----	45
1952-----	21	1959-----	63
1953-----	11	1960-----	69
1954-----	21	1961 (to June 1)-----	28

The number of communication facilities disconnected by the Pacific Co. pursuant to decision No. 41415 greatly exceeds the number of complaints for restoration of service. The Pacific Co. estimates that disconnections on written notice from law enforcement officers exceeds complaints for restoration of service by about 10 to 1.

Yours very truly,

JOHN J. HANSELMAN.

#### EXHIBIT A

Company	Disconnects and refusals		Company	Disconnects and refusals	
	Stations disconnected, 1950	Applications refused, 1950		Stations disconnected, 1950	Applications refused, 1950
New England-----	417	655	Illinois-----	1,372	( <sup>1</sup> )
New York-----	1,500	244	Northwestern-----	6	11
New Jersey-----	698	423	Southwestern-----	438	173
Pennsylvania-----	1,238	467	Mountain-----	50	2
Chesapeake & Potomac-----	284	49	Pacific-----	1,013	63
Southern-----	886	753	Southern New England-----	52	33
Ohio-----	220	26	Cincinnati & Suburban-----	23	27
Michigan-----	1,345	( <sup>2</sup> )	Total-----	8,501	2,936
Indiana-----	3	( <sup>2</sup> )			
Wisconsin-----	6	( <sup>2</sup> )			

<sup>1</sup> Estimated from number of locations disconnected.

<sup>2</sup> No record available.

(Thereupon, at 12:15 p.m., the committee recessed until 1:45 p.m. on the same day.)

#### AFTERNOON SESSION

(The committee resumed at 2 p.m., pursuant to the taking of the noon recess.)

The CHAIRMAN. Our next witness will be a distinguished and dedicated public servant from Queens County, the county from whence comes our colleague, Representative Lester Holtzman. I refer to Frank D. O'Connor, district attorney of Queens County, who this afternoon represents in his testimony the New York State District Attorneys' Association, of which I understand Mr. O'Connor is president.

Mr. O'Connor, we will be glad to hear from you.

Mr. HOLTZMAN. Mr. Chairman, I thank the chairman for so graciously receiving my good friend, Frank O'Connor. I should like the committee to know that we don't have a better law enforcement official in any State in the country. I don't know whether this is going to come as a great compliment to Mr. O'Connor, but he was my mentor and tutor politically.

With that, I will leave the rest of the judgment to the committee. I am happy to have you here.

**STATEMENT OF FRANK D. O'CONNOR, DISTRICT ATTORNEY, LONG ISLAND CITY, N.Y.; ACCOMPANIED BY FRANK SMITH, ASSISTANT DISTRICT ATTORNEY, CHIEF, RACKETS BUREAU, QUEENS COUNTY, N.Y.**

The CHAIRMAN. You may proceed, Mr. O'Connor.

Mr. O'CONNOR. Thank you, Congressman.

The CHAIRMAN. Thank you on behalf of a good teacher and a good pupil.

Mr. O'CONNOR. Thank you very much, Mr. Chairman. As you indicated in your introduction of me, I appear today not only as the president of the New York State District Attorneys' Association, which comprises the 62 district attorneys of our State and most of their assistants; but I also appear as the district attorney of Queens County, which is known as a great county for many reasons, not only for the quality of the Congressmen it sends down here such as my dear friend Lester Holtzman, with whom I have maintained a mutual admiration society now for these many, many years—that should take care of him—but also for the fact, Mr. Chairman, on a serious note, that we have in our county at this time two of the large racetracks in the metropolitan area.

It is primarily in support of the legislation now before this committee dealing with the dissemination of information from racetracks that I appear today. I have had my legal staff in the office prepare a memorandum concerning the other bills that are pending before the committee. I have submitted that through counsel to the committee. I will not go into that any further at this time except to say that we are generally in complete accord with all of the bills pending before the committee.

We think they are very, very necessary measures. We think they will strengthen very much the hand of law enforcement officials generally throughout the country.

The CHAIRMAN. That memorandum will be accepted for the record. (The memorandum is as follows:)

Law enforcement officers and agencies are generally agreed that organized gambling is a tremendous source of income for organized crime syndicates and that the restriction or elimination of such unlawful activity will go a long way toward hamstringing what has fast become a pernicious and debilitating toxin in the body politic.

The eradication of this evil not only is desirable but is imperative. What has contributed greatly to the growth and spread of organized gambling, and its very lifeblood, is the rapid and easy dissemination of information vital to gambling.

H.R. 3022 and H.R. 6573 are both designed to deal with the problem of interstate transmission of gambling information in an attempt to make it more difficult for organized gambling to continue to operate and exist. H.R. 3022, which would add new paragraphs to section 1081 of title 18 of the United States Code, is quite extensive and provides that each person required to pay the special \$50 tax for engaging in receiving wagers as provided by the Internal Revenue Code shall, at the time of the payment of such tax, submit for transmittal to the Attorney General an affidavit stating—

(1) Whether he has transmitted or received gambling information in interstate commerce during the preceding 12 months;

(2) Whether he intends to transmit or to receive such information during the year that the registration is in effect.

And further providing that the failure to file such required affidavit or the filing of such affidavit which is false or misleading shall be punishable as a crime.

And to plug up a possible loophole, this proposed bill also provides communication services to any person it has reason to believe is required by the Internal Revenue Code to buy a \$50 gambling tax stamp, or an employee of such common carrier who assists in providing communication service or assists in the installation of any equipment to be used for such service to any person he has reason to believe is required to buy a gambling tax stamp, without informing the Department of Justice of such circumstance, shall be guilty of a crime.

H.R. 6573 also seeks to amend section 1081 of title 18 of the United States Code by adding a new paragraph. This proposed amendment is much shorter than H.R. 3022, and not as effective as that proposed bill in restricting and eliminating the dissemination of gambling information for use in organized gambling. That bill simply condemns as a crime one who leases, furnishes, or maintains any wire communication facility with intent that it be used for the transmission in interstate commerce of bets or wagers or information assisting in the placing of bets or wagers, on any sporting event or contest, or knowingly uses such facility.

H.R. 3022 presents a greater deterrent to the dissemination of gambling information than does H.R. 6573. Aside from the severer penalties of possible perjury as well as violation of the statute itself, H.R. 3022 also is aimed at the employee of a wire or radio common carrier, the underling who organized gamblers would seek first to corrupt in order to be able to employ the facilities of the common carriers.

H.R. 6573, on the other hand, which proposes to deal with those who lease, furnish, or maintain wire communication facilities would not be a deterrent to a venal employee of such facility. I therefore prefer H.R. 3022 as the more effective of the two bills to cope with the evil which grows out of the dissemination of gambling information.

Also dealing with the nationwide network of gambling rackets under the control of underworld syndicates are H.R. 3246, H.R. 6571, and H.R. 6572. These bills are identical and each seeks to amend chapter 95 of title 18 of the United States Code by adding new section 1952 to provide that the carrying or sending in interstate or foreign commerce of any records or paraphernalia for bookmaking or other gambling shall constitute a crime. For the same reasons for which I endorse the proposed bills dealing with the transmission of gambling information, I am sure that those engaged in law enforcement also endorse this proposed legislation.

Even worse than organized gambling is the preying by racketeers upon legitimate industry. This has been a vicious cancer in the economy of the country. One of the greatest obstacles in ferreting out and uprooting this evil has been the reluctance of witnesses, through fear, to testify. Only in comparatively recent years have effective statutes been enacted which empower courts and prosecutors to grant immunity to witnesses in order to compel testimony and thereby deal more effectively with the vicious organized cartels of crime. Prior to that, it was impossible to cope with or to remedy the growth of criminal conspiracies which were strangling the economic life of our country.

Consequently, I consider H.R. 3021 an excellent bill. That bill proposes to give a U.S. attorney, upon approval of the Attorney General, power to apply to a court that a witness be instructed to testify or produce evidence in any matter before a grand jury or a U.S. court involving a violation of section 1951 of title 18 of the United States Code, which deals with racketeering and the interference with commerce by threats or violence, and that such witness shall not be excused from so testifying or producing evidence on the ground that it may tend to incriminate him.

H.R. 468 and H.R. 3023 are identical and each seeks to amend section 1073 of title 18 of the United States Code which makes it a Federal crime to leave a State in order to avoid prosecution under State laws. These proposed bills are designed to broaden Federal jurisdiction in this regard by increasing the applicability of this statute to many more crimes than it now covers. That this is desirable legislation goes without saying.

This statute has been extremely helpful in tracking down a criminal who has fled from the State in which he committed a crime. For it has brought into play the facilities of the nationwide network of the FBI and other Federal agencies in apprehending State criminals. One of the most outstanding examples which we had was in the Virgil Richardson case in which a policeman was murdered in Jamaica. Richardson was apprehended by the FBI on a Federal warrant charg-

ing violation of this statute as he alighted from an interstate Greyhound bus in Atlanta, Ga.

Consequently, this bill is heartily endorsed.

H.R. 5230 is also endorsed. That bill adds sections 373 and 374 to title 18 of the United States Code, which deals with conspiracy to commit organized crime offense against a State and provides that any persons who so conspire, deliver for shipment in interstate commerce or deposit in the mails any message or communication, or receives any article, letter, message, or communication to effect the object of such conspiracy commit a crime and, if as a result of any such conspiracy, a person is murdered, maimed, or subject to great bodily harm, the penalty is tremendously increased.

Since this statute would have the same effect as the statute which makes it a Federal crime for a person committing a State crime to leave that State to escape prosecution—the bringing into play the countrywide Federal network of police and investigative agencies in tracking down the malfactor and in gathering evidence against him—this bill, in my opinion, is very desirable.

Mr. O'CONNOR. I would like to have the record indicate, Mr. Chairman, if I may, that there appears with me the chief of our rackets bureau in the Queens County district attorney's office, Assistant District Attorney Frank Smith, who just made the phone call that we listened to.

I have sat upon committees of this kind during my years in the legislature in Albany, and I have found them at times to be somewhat monotonous. So the phone call we just made, if it did nothing else, perhaps it might have relieved some of the monotony of these long hearings.

But there is much more to it than that. This morning I heard reference made to the report of the New York State Crime Commission dealing with this problem of the dissemination of information from race-tracks. As a law-enforcement official, I welcome very, very much the efforts that the New York State Crime Commission has made.

But I say this, that the information that they have acted upon was received by them from one of the great metropolitan newspapers in New York—The New York Journal-American. In turn it was given to that paper by our office, because we have been concerned with this problem in Queens County since 1952.

We at that time made a test case of this system of sending the rapid order of finish of races at our racetracks in Queens County in our magistrate's court; and unfortunately that case was lost so that in all fairness to anyone who is concerned with the problem and in all fairness to the telephone company and other common carriers who make available their wires for this kind of service, the problem is this, that this is a legal procedure.

The only test case that has been made—at least to my knowledge, and certainly the only one in the State of New York—was dismissed. So this is a legal procedure, entirely legal. There is nothing illegal about it as far as the law stands now.

Because of that, and because we realize the tremendous evil that exists, we say, first of all, Mr. Chairman, that this procedure is the backbone of illegal gambling and illegal off-track betting in the United States.

The CHAIRMAN. Will you tell us exactly the import of this telephone call and what exactly you did before the members of this committee so that those who read the proceedings will understand?

Mr. O'CONNOR. Yes. Well, then, I will describe it in some detail and I trust I am not going to trespass upon your time too long.

This phone call today is the result of long experience and long investigation and observation and supervision by our office. There is this wire service that is located in Wilmington, Del.

Mr. FOLEY. Is that the Delaware Sports Service?

Mr. O'CONNOR. It is the Delaware Sports Service. It was founded by a man by the name of Joseph Tollin, who is now deceased. The service today to the best of our knowledge is being conducted by his son.

In our presence, and during his lifetime, Joe Tollin said to us that there was no question about it; all of his customers practically without exception were bookmakers. As he said, who else would pay a fee of \$25 to get the results of one race at some track in another part of the country?

The way it works is this. The wire service has situated at the finish line of the racetracks throughout the country wherever racing takes place—and they follow the racing season; we see them; we can go out and see them every day that there is racing at Aqueduct in Queens County or at Belmont or at the old Jamaica Racetrack—they have a man stationed at the finish line.

He is equipped either with a system of hand signals—if the committee is interested, we have pictures here that will indicate how they operate. The position of a hand to a certain part of the anatomy—say to the right ear—might indicate that No. 1 horse finished first. The left hand to the left ear might indicate No. 2, and so on. They have a system of physical signals indicating the number of the horse and the number of the finish of the race.

Situated in a building immediately adjacent to the racetrack is a confederate who is there with a pair of high-powered binoculars, who picks up this finish. As I said, the first man is stationed at the finish line. The results of the race are flashed immediately to the man with the binoculars, who picks it up and who at that time has an open wire directly down into the Delaware wire room down in Wilmington, Del.

Mr. FOLEY. Is that called the pitcher-catcher system?

Mr. O'CONNOR. That is the pitcher-catcher system. That is one way it works. There is another system where they have an electronic device that is strapped to the leg. We found that out in one of our investigations, where by a series of pressing upon this electronic box strapped to the leg they can send on shortwave the number of the finish, the number of the horses.

A third way, of course, is a quite obvious way. It is easy of detection—the short wave radio, which we have found to be used upon occasion in our racetracks in Queens County. This will carry for a distance of at least a quarter to a half a mile.

The CHAIRMAN. You are holding in your hand what?

Mr. O'CONNOR. I am holding in my hand a walkie-talkie.

The CHAIRMAN. That is called a walkie-talkie?

Mr. O'CONNOR. A walkie-talkie. This is a common way. I think those are about the three systems that are used at the present time.

When the phone call is made, as I say, first of all the man up in the house adjacent to the racetrack has an open wire directly down into Wilmington which he opens up a minute or two before the race begins. From then on he carries on his running conversation with Wilmington, and gives the order of the finish.

The customers on the other side operate in this fashion—and we did this yesterday in New York so as to prepare this rather dramatic example of how it works for your committee. We sent a telegram, a copy of which we have here, to the wire service in Wilmington, Del. We sent with it a money order. The charges are \$25 for the first race, \$5 for each additional race. You will then get the order of finish.

Our telegram was signed with the name of one of our detectives on our staff, with his home address and his home telephone number. Now, when Assistant District Attorney Frank Smith called this number now, he called it 2 minutes before 2 o'clock because the second race went off at 2:00 p.m. We were all here; we saw and heard what happened.

His phone call went immediately into the wire room. He gave the name of this individual on our staff whose name is on the telegram. Generally they will ask for the address and for the telephone number just to verify that you are a paid customer. They have a list there that they run down and they check it out, and if you are OK. then you are in.

Then they said to Frank Smith, "They're off; they're running." Then they give you the order of finish as fast as it comes in to them. Many times, as I said to some of the men seated here, where the order of finish is not close, if there are 4 or 5 or 6 or 7 lengths between the first horse and the second horse, then the man who is stationed at the finish line, as he sees the horses thundering down the stretch, will give the returns of the race; and they will be in Wilmington and back here in Washington, or wherever they are going, before the race is actually finished back in Queens County.

It is a fantastic situation.

The CHAIRMAN. The advantage of that is, those who subscribe to this service will know immediately as though they were at the track who has won or who has come in second and third and so forth.

Mr. O'CONNOR. Precisely. Then additional information is picked up off the tote board. This is before the race—the odds, the jockeys, the track condition, anything that might be useful. I haven't been to a racetrack in my life more than twice, so I am not too familiar with it; but any other information that would be of interest to the betting clientele.

The CHAIRMAN. So they will accept wagers in places other than Delaware through the auspices of these bookies who subscribe to this even after the race is actually won because the information will not have been received by the innocent bettor until hours afterwards probably.

Mr. O'CONNOR. You are so right, Mr. Chairman—particularly in far parts of the country where the time differential is an hour or two or three hours. They have the information, as I say, sometimes before the race is completed. They can then permit the cheaters to cheat the cheaters—the bookies can then take bets after the race is finished.

In those sections of the country—and I say this with all honesty; we don't have them in New York State—where they have horse rooms where there are horse players seated around these illegal betting rooms, this is a great stimulant to a man if he finds out he just won. He

finds it out immediately. He is going to bet on the next race, whereas he wouldn't ordinarily in the normal course of events get the results for a half hour or 45 minutes or an hour later.

The CHAIRMAN. That is a parlor.

Mr. O'CONNOR. That's right. Now you have another vicious part to this program, and it is a thing that has us greatly concerned. We know this, too, and it is a result of our observation, that the illegal policy ring is made up, and the numbers are set according to the finish of the races, at these different racetracks.

According to the order of finish they are made up—first, second, and third races. They total up the amounts wagered. The figure to the right of the digit is the first number that will appear in your policy. The results on the fourth and fifth race similarly will make the second number.

Where it is terribly important—and I don't need to tell anyone in this room; you are familiar with the tremendous amounts of money that are wagered daily in the numbers racket—they are in a position if they see things going wrong on the first and second numbers to begin laying money down—changing the odds.

So it is a completely evil thing. I say this to you with all due deliberation. This is a vicious thing to our way of thinking.

Mr. CRAMER. By policy, you mean the numbers racket?

Mr. O'CONNOR. The numbers racket.

Mr. FOLEY. Mr. O'Connor, right there, though, I think you should explain to the members of the committee who are not familiar with the bookmaking operation the very important element of time before the race in the placing of bets by the syndicate to regulate odds.

Mr. O'CONNOR. I don't know what I can say, Mr. Counsel.

Mr. FOLEY. I am thinking about the layoff money that goes into a track.

Mr. HOLTZMAN. In other words, Mr. O'Connor, if the syndicate has practically immediate knowledge of the results of a race, then they—if they have lots of action, so to speak, on that particular horse—might have an opportunity to juggle so that they minimize their own loss to the detriment of the bettor.

Mr. O'CONNOR. Oh, yes, they layoff with other bookies.

Mr. FOLEY. By laying it into the totalizer at the track where they have men stationed with this money, they can reduce the odds.

Mr. O'CONNOR. That's exactly right.

Mr. FOLEY. That is how they pull it in from all over the country prior to the race going off.

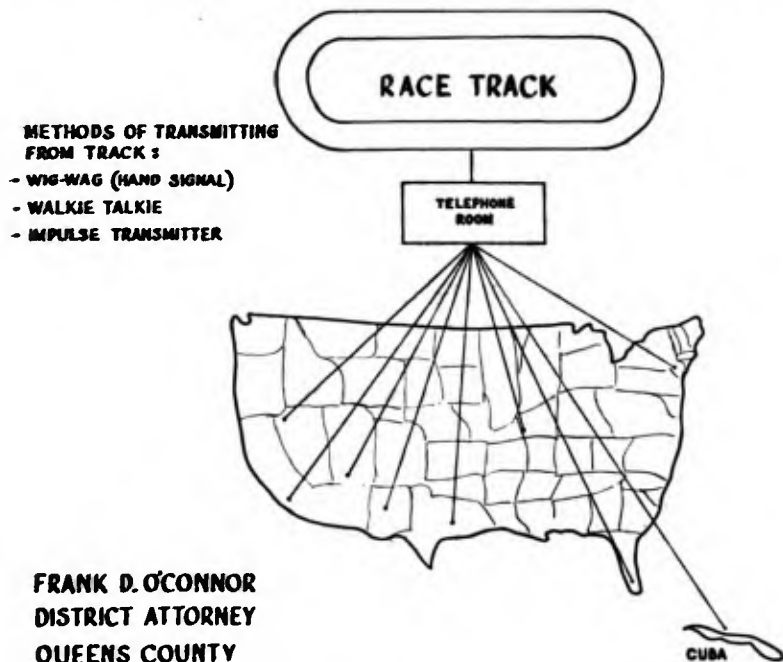
Mr. O'CONNOR. Right.

The CHAIRMAN. Have you any objection to putting that chart into the record?

Mr. O'CONNOR. I have none at all, Mr. Chairman. We brought it down for that purpose to just illustrate that this thing is not only national; it is international. These phone calls go out of Delaware into Canada, into Cuba.

(The chart is as follows:)

## INTERNATIONAL OPERATION OF RACING WIRE SERVICES



Mr. O'CONNOR. In an effort to stop this thing in the State of New York, I prepared after a very careful study a bill and had it introduced in the State legislature for the first time in 1958, I believe. It was passed by both houses of the State legislature, but there were quite a number of objections raised by the members of the press.

I think it is important that I inform the committee of these facts just to show that these objections have been removed.

We then had conferences with different members of the press, all of them who reported any kind of sports or racetrack information. We cleared up all of the objections that they had raised; so that the legitimate press—and certainly the legitimate radio and television, any of the means of communication—do not oppose this kind of legislation if the bugs are removed from it. We did it in New York.

The CHAIRMAN. Wasn't that passed again this year?

Mr. O'CONNOR. It was passed again in 1959. The first time, when the objections were raised, I wrote to the Governor and suggested that the bill be vetoed, and it was vetoed. In 1959 or 1960, I guess was the second year, the bill passed again. Because of a technical defect

that they found in the bill in that it went into effect immediately and the Governor thought it should not go into effect for a reasonable period of time, meaning the following September. It was vetoed a second time.

The CHAIRMAN. It was vetoed again?

Mr. O'CONNOR. Yes. The third bill was introduced in 1961, this year. It died in committee in both houses, was not passed because there were many objections raised to it.

The CHAIRMAN. It wasn't passed this year?

Mr. O'CONNOR. It was not passed this year.

The CHAIRMAN. Any reason for that?

Mr. O'CONNOR. I can't understand the reasons.

The CHAIRMAN. Have you got a draft of that bill?

Mr. O'CONNOR. I have a draft of the bills that I have introduced for the 3 years.

The CHAIRMAN. We would like to have those bills placed in the record.

(The bill is as follows:)

# STATE OF NEW YORK

No. 3950

Int. 3645

IN SENATE

February 23, 1960

Introduced by Mr. HUGHES—read twice and ordered printed, and when printed to be committed to the Committee on Codes

EXPLANATION.—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

AN ACT To amend the penal law, in relation to the dissemination of racing information

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The penal law is hereby amended by inserting therein a new section, to be section nine hundred eight-six-b, to read as follows:

"Sec. 986-b. Transmitting racing information. (1) Any person who transmits or communicates to another by any means whatsoever the results, changing odds, track conditions, jockey changes or any other information relating to any horse race or harness race from any race track in this state, between the period of time beginning one hour prior to the first race and ending thirty minutes after the posting of official results of each race as to that particular race, except when permission has been granted by the state racing commission or the state harness racing commission; or

"(2) Any person who transmits by any means whatsoever racing information to any other person or who relays the same to any other person by word of mouth, by signal or by use of telephone, telegraph, radio or any other means, when the information is knowingly used or intended to be used for illegal gambling purposes or in furtherance of such gambling; or

"(3) Any person who, while outside the confines of the grounds or inclosure of a duly licensed race track knowingly receives, forwards, sends, transmits, conveys, signals or delivers any such racing information sent, transmitted, conveyed, signalled or delivered in violation of the provisions of this section shall be guilty of a misdemeanor.

"(4) 'Racing information' for the purposes of this section shall mean and include, but not be limited to any facts, news, race or information relating to betting odds, starting time, finishing time, results and names of horses or jockeys.

"(5) 'Person' for the purposes of this section shall not mean or include radio and television coverage of racing events by those representatives, agents and employees of radio and television stations under the jurisdiction and control of the federal communications commission, and shall not mean or include press coverage of racing information by those representatives, agents and employees of publications transmitting racing events over and through regular and authorized leased wire systems or authorized telephones."

Sec. 2. This act shall take effect immediately.

## STATE OF NEW YORK

Print. 1349

Intro. 1333

IN SENATE

January 17, 1961

Introduced by Mr. HUGHES—read twice and ordered printed, and when printed to be committed to the Committee on Codes

EXPLANATION.—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

AN ACT To amend the penal law, in relation to the dissemination of racing information

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The penal law is hereby amended by inserting therein a new section, to be section nine hundred eighty-six-d, to read as follows:

"§ 986-d. *Transmitting racing information.* (1) *Any person who transmits or communicates to another by any means whatsoever the results, changing odds, track conditions, jockey changes or any other information relating to any horse race or harness race from any race track in this state, between the period of time beginning fifteen minutes prior to the first race and ending fifteen minutes after the posting of official results of each race as to that*

*(2) Any person who transmits by any means whatsoever racing information to any other person or who relays the same to any other person by word of mouth, by signal or by use of telephone, telegraph, radio or any other means, when the information is knowingly used or intended to be used for illegal gambling purposes or in furtherance of such gambling; or*

*(3) Any person who, while outside the confines of the grounds or inclosure of a duly licensed race track knowingly receives, forwards, sends, transmits, conveys, signals or delivers any such racing or gambling information sent, transmitted, conveys, signalled or delivered in violation of the provisions of this section shall be guilty of a misdemeanor.*

"(4) 'Racing or gambling information' for the purposes of this section shall mean and include, but not be limited to any facts, news, race or information relating to betting odds, starting time, finishing time, results and names of horses or jockeys.

"(5) 'Person' for the purposes of this section shall not mean and include radio and television coverage of racing events by those representatives, agents and employees of radio and television stations under the jurisdiction and control of the Federal Communications Commission and shall not mean and include press coverage of racing events by those representatives, agents and employees of publications transmitting racing events over and through regular and authorized leased wire systems."

§ 2. This act shall take effect immediately.

## STATE OF NEW YORK

No. 4991

Int. 4365

IN ASSEMBLY

March 17, 1959

Introduced by COMMITTEE ON RULES—read once and referred to the Committee on Rules

EXPLANATION.—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

AN ACT To amend the penal law, in relation to the dissemination of racing and gambling information

*The People of the State of New York, represented in Senate and Assembly do enact as follows:*

SECTION 1. The penal law is hereby amended by inserting therein a new section, to be section nine hundred eighty-six-b, to read as follows:

"§ 986-b. *Transmitting gambling information.* (1) *Any person who transmits or communicates to another by any means whatsoever the results, changing odds, track conditions, jockey changes or any other information relating to any horse race or harness race from any race track in this state, between the period of time beginning one hour prior to the first race and ending thirty minutes after the posting of official results of each race as to that particular race, except when permission has been granted by the state racing commission; or the state harness commission or the state harness racing commission; or*

*"(2) Any person who transmits by any means whatsoever racing information to any other person or who relays the same to any other person by word of mouth, by signal or by use of telephone, telegraph, radio or any other means, when the information is knowingly used or intended to be used for illegal gambling purposes or in furtherance of such gambling; or*

*"(3) Any person who, while outside the confines of the grounds or inclosure of a duly licensed race track knowingly receives, forwards, sends, transmits, conveys, signals or delivers any such racing information sent, transmitted, conveyed, signaled or delivered in violation of the provisions of this section shall be guilty of a misdemeanor.*

*"(4) 'Racing information' for the purposes of this section shall mean and include, but not be limited to any facts, news, race or information relating to betting odds, starting time, finishing time, results and names of horses or jockeys.*

*"(5) 'Person' for the purposes of this section shall not mean or include radio and television coverage of racing events by those representatives, agents and employees of radio and television stations under the jurisdiction and control of the federal communications commission, and shall not mean or include press coverage of racing information by those representatives, agents and employees of publications transmitting racing events over and through regular and authorized leased wire systems or authorized telephones."*

§ 2. This act shall take effect September first, nineteen hundred sixty-one.

[For immediate release, Saturday, Apr. 30, 1960]

(Robert L. McManus, press secretary to the Governor)

STATE OF NEW YORK,  
EXECUTIVE CHAMBER,  
Albany, April 29, 1960.

No. 210.

Memorandum filed with senate bill, introductory No. 3645, print No. 3950, entitled: "An act to amend the penal law, in relation to the dissemination of racing information."

Not approved.

This bill, effective immediately, would make it a misdemeanor to transmit racing information from a racetrack during the period beginning 1 hour before the first race and ending 30 minutes after the posting of official results of the race to which the information referred. It would also make the transmittal of

any information known to be used for illegal gambling a misdemeanor, and provision is made for the exemption of certain persons connected with news services.

Our racetracks contain various telephones some of which are available to the public. Public telephones are now closed to the public during race times by regulations of the State racing commission and the State harness racing commission. However, such regulations do not apply to a time more than 15 minutes after the results of the last race are posted and in the case of the State racing commission to a time more than 15 minutes before the first race.

This bill would become effective immediately, with the result that a member of the general public who tomorrow communicated the results of a race to friends or relatives from a telephone at a racetrack would be committing a crime, although he had no opportunity to learn of this bill and was using the telephone in compliance with regulations of the appropriate commission.

It has long been generally understood that all statutes creating new crimes should become effective in the September after their enactment in order that the public, the lawyers, and our judges may have an opportunity to learn of the new crime. While exceptions from the general rule may in certain circumstances be justified for crimes which involve conduct *malum per se*, the conduct here involved would be at most *malum prohibitum* and, therefore, should not be penalized except upon reasonable notice to the public.

Disapproval of the bill is urged by the Association of the Bar of the City of New York.

The bill is disapproved.

NELSON A. ROCKEFELLER.

#### RECEIPT

THE WESTERN UNION TELEGRAPH CO.,  
Long Island City, N.Y., May 23, 1961 P.M. 4:26.

Received from Benjamin Kossoff.  
Address: 169-16 84th Ave., Jamaica, AX-1751.  
Thirty Dollars \$30.00.  
To: Delaware Sport Service.  
Address: WC WU.  
Place: Wilmington, Del.

Chgs.....	\$ .60
Tolls.....	1.70
Tax.....	.17
Total.....	2.47

THE WESTERN UNION TELEGRAPH CO.,  
By M. MERCURY.

LONG ISLAND CITY, N.Y., May 23, 1961 P.M. 4:32.

Amt.....	\$30.00
Chgs.....	.60
Tolls.....	1.70
Tax.....	.17
Total.....	32.47

Pay Amount: Thirty and 00/100 Dollars and 30 Cents.  
To: Delaware Sport Service.

Address: Wilmington, Delaware, c/o Western Union.

Senders name: Benjamin Kossoff, AX 7-1751.

Deliver the following message with the money: Will Call Wednesday for Results,  
1st & 2nd race Aqueduct.

BEN KOSSOFF.

169-16 84th Ave., Jamaica; AX 7-1751.

Mr. McCULLOCH. Mr. Chairman, did I understand Mr. O'Connor to say that there was a bill vetoed in 1960 and in 1959 as well?

Mr. O'CONNOR. No, sir. There was a bill vetoed in 1959 at our suggestion. We wrote to the Governor and suggested that it be re-

jected because of these objections. In 1960 the bill was passed and it was vetoed by the Governor because of this technical defect, which I think incidentally was a sound objection. In 1961 the bill died in committee in both houses and did not pass either one.

Mr. MEADER. You are not complaining about the veto, then, of these bills.

Mr. O'CONNOR. In no manner, shape, or form; no, sir.

The CHAIRMAN. Are there any similar services to this exemplified in the chart?

Mr. O'CONNOR. This is the only one that we know of on a nationwide, big scale. I think this one floods and covers the entire country.

Mr. FOLEY. This is almost the successor to old Continental.

Mr. O'CONNOR. It is. This is the successor to old Continental. Frank Smith just recalled to my mind that we do have one operating on a very small scale in Queens County, which incidentally we arrested a year or two ago.

I presented the case myself to the grand jury. We couldn't get an indictment. We didn't have sufficient evidence. There is no law that covers it. This man was operating purely and clearly and solely to bookies, but to prove it is impossible unless you can catch known bookies there.

I don't want to bring it up at this time, but many of the fruits of our labors in this field have been made possible because of our ability to tap wires. I don't want to throw that out to the committee at this time.

The CHAIRMAN. Let me ask you this. If the State of New York passes this bill—it was vetoed twice—in a proper form and it is signed by the Governor, that would deal a very severe blow to syndicated betting throughout the country.

Mr. O'CONNOR. Well, I think it would have a good effect in the State of New York. But it would have no effect outside of the State of New York.

The CHAIRMAN. They can set up other schemes of that sort outside of New York?

Mr. O'CONNOR. Certainly. I think it has worked fairly well in Florida. I have consulted with the district attorney of Dade County on several occasions. It has worked well, I think, in California. It would work well in New York, but in my opinion, to wipe this thing out on a nationwide basis it would require Federal legislation in addition to State legislation.

The CHAIRMAN. In other words, if you have this bill passed in New York State and you convict the owner of it, or whoever is involved in it, he simply moves his transactions to another State and operates there.

Mr. FOLEY. Is it a fact that, if you convicted Tollin in New York, he would go to jail in New York State but somebody would run it in the other 49 States?

Mr. O'CONNOR. What you say is absolutely so. The big operators are down here in Wilmington, Del. We can't touch them. They have a bunch of real creeps—if you will excuse the expression—running the thing up in New York. They don't care whether they are arrested or not.

So we arrest them; we will convict them of a misdemeanor; they go to jail and the next day they have somebody else back in there doing it.

The CHAIRMAN. So it must be something attacked on a nationwide basis.

Mr. O'CONNOR. I would think so, Mr. Chairman.

Mr. CRAMER. Which bill before this committee do you think will accomplish that most effectively?

Mr. O'CONNOR. I think H.R. 3022 and H.R. 6573 will do a great deal toward solving the situation. We approve them very strongly; H.R. 3022 particularly, which contains the provisions for that affidavit, will make it all the more difficult.

Mr. CRAMER. H.R. 3022 is also incorporated as a title in H.R. 6909. That is the one with regard to tying it into the gambling stamp tax provision, requiring the filing of an affidavit.

Mr. O'CONNOR. Yes, sir.

The CHAIRMAN. Have you covered everything in your statement?

Mr. O'CONNOR. I believe I have, Mr. Chairman.

The CHAIRMAN. Are there any questions?

Mr. FOLEY. This is rather technical, Mr. O'Connor. Talking about the man who received the information, the catcher in the system of pitcher-catcher, he has an open wire going down to Wilmington from, say, outside of Aqueduct track.

Mr. O'CONNOR. Right.

Mr. FOLEY. In your experience in investigation, does he maintain those premises, or is it a private wire?

Mr. O'CONNOR. As far as the premises themselves are concerned, they have invariably consisted of just a rented room in a rooming house. In one instance we have a picture here actually taken of a pigeon coop up on the top of a building near Aqueduct. Here it is right here. They have inside of the pigeon coop a telephone. I don't know whether you can see it in the picture or not. That is all they pay. They pay maybe \$5 or \$10 a month. This fellow walks up there every time at race time.

The finish line is right here in this picture. He can see the finish line. He can see the tote board. He has an open wire maintained there, a telephone with an open wire right down to Wilmington.

The CHAIRMAN. Let me ask this question. Who operates these racetracks?

Mr. O'CONNOR. The New York State Racing Commission has general supervision over the whole racing problem in New York State. You have the Greater New York State Racing Association. I am not too familiar with it.

The CHAIRMAN. The New York State Racing Commission has considerable power, hasn't it?

Mr. O'CONNOR. Yes, sir; they do.

The CHAIRMAN. Could they stop one of these services?

Mr. O'CONNOR. No. They have done, I think, what they can do. They have recognized the evil long before we did. They have an absolute rule that inside any racetrack in the State of New York all telephones are immediately locked for—I am not sure—a half hour before race time and a half hour afterward. They recognize this problem.

Mr. FOLEY. The receiver is outside of the physical confines of the track.

Mr. O'CONNOR. Absolutely.

Mr. FOLEY. That's why they use these hand signals or microwave. They can't use a telephone.

Mr. O'CONNOR. They have to get that information from within the confines of the track outside of the track because every public telephone—and for that matter every office telephone—is guarded and cannot be used.

The CHAIRMAN. Couldn't this New York Racing Association ban from the track anyone who has such a walkie-talkie or who originates this information to somebody on the outside? Couldn't they ban that?

Mr. O'CONNOR. Mr. Chairman, they could. We have gotten good cooperation from them. They will, upon any complaint of ours or any suspicion that we direct, prevent anyone from entering the track. They will eject anyone that we will point out to them as a person who is under suspicion.

But it is impossible for them to pick them up every day in the week. This man who at the finish line mingles with a crowd of 40,000 other people stands in the middle of them. You can't see him.

Mr. HOLTZMAN. They can get a substitute for any man who has been picked up.

Mr. O'CONNOR. That's right. The signals are comparatively obscure. This is No. 1, as I say. No. 2, nobody can see it except the man sitting up on the rooftop with his binoculars. Nobody would pay any attention to it.

Mr. FOLEY. How about the man who is on the receiving end? How does he get this telephone, say, in the pigeon coop on the roof?

Mr. O'CONNOR. That I am not too familiar with except I would assume it is a normal installation of a telephone that is put in there for ordinary use.

The CHAIRMAN. Wouldn't that create some suspicion or should it not create some suspicion—installing a telephone in such an obscure and unusual, bizarre place?

Mr. O'CONNOR. I would think that it would at least be the source of some inquiry if the application came across my desk for the installation of a telephone in a chicken coop.

The CHAIRMAN. Especially when it is in the vicinity of a racetrack.

Mr. O'CONNOR. What we found was this, Mr. Chairman, that in one instance out at Aqueduct, I believe it was last year, they were using a public telephone. What they would do was 5 minutes before the first race they would go over and hang a sign on it, "Out of Order," or they would take the receiver off the hook and let it dangle on the side so nobody would normally use it.

Then, a minute or two before race time they would go in and commence using the phone.

Mr. FOLEY. Have you ever come across an instance where this man on the receiving end has had a private wire going right into Wilmington?

Mr. O'CONNOR. I don't recall any such instance, no.

Mr. FOLEY. They use a regular telephone?

Mr. O'CONNOR. Regular telephone.

Mr. MEADER. Mr. O'Connors, you mentioned a prosecution that was unsuccessful.

Mr. O'CONNOR. Yes, sir.

Mr. MEADER. Who did you prosecute for what?

Mr. O'CONNOR. I have the rundown of the story here and I can give it to you briefly. I think I can give you the names; but as I stated, I must say these people were completely acquitted.

Mr. HOLTZMAN. Mr. Chairman, I think we could do without the names for the purposes of this hearing.

Mr. O'CONNOR. All right, that might be good. I will say that the following were arrested and charged with the following crimes: X, Y, and Z were charged with violation of section 1372 of our penal law, which is contriving a lottery; and section 580, which is a conspiracy; and bookmaking and policy under sections 974 and 986 of the penal law.

Defendants A, B, and C were charged—again this is all technical—with violating sections 580, 986, 974; and in addition one of them was charged with a violation of section 1423. If you were to ask me now what all of those sections are, I couldn't tell you. They all deal in one phase or another with gambling and lottery.

They were all acquitted.

Mr. MEADER. Did you indict the man who was receiving this message from the track and transmitting it to Delaware?

Mr. O'CONNOR. We had picked up the original sender from the finish line, the receiver in the building outside the track, and the owner of the premises and two or three other people involved in that part of the operation.

Mr. HOLTZMAN. In other words, all of those over whom you might have jurisdiction.

Mr. O'CONNOR. Exactly.

Mr. MEADER. The idea was that what they were doing was not a crime. Is that it?

Mr. O'CONNOR. Exactly. I don't have the opinion here. It was written by a very, very capable judge who is now a member of our county court branch and a very good lawyer. I don't recall it precisely, but in substance he indicated that if we could have established that they were performing these acts in conspiracy or in conjunction with a known gambler, we might have had a case. We just couldn't do it.

The CHAIRMAN. Would you say, Mr. O'Connor, if we enact some legislation that would knock this kind of practice into a cocked hat, then we would be crippling this betting, gambling, and petty crime?

Mr. O'CONNOR. Very definitely, Mr. Chairman. I think it would strike a tremendous blow against it. With all due respect, I don't consider this petty gambling. I consider this the backbone of an awful lot of organized, syndicated, bigtime crime.

Mr. CRAMER. In other words, if we as Members of Congress don't look away from this problem but do something about it, such as putting tools in the hands of the persons who can assist, such as employees of phone companies who are requested to install phones in such places that raise questions, wouldn't that be of assistance to you?

Mr. O'CONNOR. Very definitely.

Mr. CRAMER. Wouldn't it be of further assistance to you if you yourself had a way, through proper court order, and so forth, through wiretapping, to do something about it?

Mr. O'CONNOR. Very, very definitely.

Mr. CRAMER. As contained in title IX of H.R. 6909?

Mr. O'CONNOR. Yes, sir; I am all for it.

Mr. CRAMER. Are you familiar with the wiretap proposal of the Attorney General as it relates generally—this is restricted to organized crime?

Mr. O'CONNOR. Yes, sir; I am.

Mr. CRAMER. You would be in favor of it?

Mr. O'CONNOR. Very much in favor of it.

Mr. HOLTZMAN. There is no doubt in your mind that this operation is part of organized gambling, because it is.

Mr. O'CONNOR. No question about it. This could not be operated by isolated incidental figures in the underworld. This is an organized, syndicated thing.

Mr. CRAMER. What has been your experience with the phone companies in requesting that they discontinue services?

Mr. O'CONNOR. All the time through all of this I have had a great deal of sympathy with the telephone companies because they are caught, as we said this morning, on the horns of a dilemma. This thing is legal.

Mr. CRAMER. So, in this situation, if you had a Federal statute prohibiting it, based upon that, you could advise the phone company that this use, in your opinion, is illegal—

Mr. O'CONNOR. Right.

Mr. CRAMER. But even under those circumstances, under present law, if the phone company discontinues the service, they do so at their own peril.

Mr. O'CONNOR. Their own peril.

Mr. CRAMER. But if Congress should provide that authority to the phone companies, specifically if you request that it be discontinued on a basis that you have reason to believe it is being used for that purpose, then wouldn't that give you a much more effective tool?

Mr. O'CONNOR. I think it very definitely would; yes.

Mr. CRAMER. Haven't you run into some resistance because of the "horns of a dilemma" on the part of the phone company cutting this off?

Mr. O'CONNOR. Yes. They are reluctant, and understandingly so, because they are uncertain as to whether or not they are taking the proper step or whether or not they may be subject to a civil suit for damages. I can understand their position.

Mr. CRAMER. Don't you think it is essential that we do something in that field to give them that authority?

Mr. O'CONNOR. Very definitely.

Mr. CRAMER. To cut it off on your request?

Mr. O'CONNOR. Yes, sir.

The CHAIRMAN. Let me ask you something about the cost of this service. I understood you to say to each bookmaker who subscribes to this Delaware service the cost is \$25 for the winner and \$5 for each horse?

Mr. O'CONNOR. No, sir. It is \$25 for the first race, and \$5 for each race thereafter. Let me give it to you right from the record; we have it here. The charges, Mr. Chairman, are \$20 for one race; \$30 for two races; \$40 for three races; and \$50 for five to six races.

The CHAIRMAN. \$50 each race the bookmaker must pay if he subscribes.

Mr. O'CONNOR. \$50 for the afternoon's racing.

The CHAIRMAN. The afternoon?

Mr. O'CONNOR. Yes, sir.

The CHAIRMAN. In Queens County where you are, there are two race tracks, Aqueduct and Jamaica. Is that right?

Mr. O'CONNOR. Aqueduct and Belmont. Jamaica is now no longer.

The CHAIRMAN. So \$50 a day covers 2 months, doesn't it?

Mr. O'CONNOR. It will cover 1 day.

The CHAIRMAN. I know, but they race there for 1 month.

Mr. O'CONNOR. I don't know—2 or 3 months. I never go there.

The CHAIRMAN. So, anyhow, it is \$50 a day for a race. How many bookmakers are there?

Mr. O'CONNOR. In Queens we don't have any, Mr. Chairman.

The CHAIRMAN. Roughly how many?

Mr. O'CONNOR. I wouldn't hazard a guess, Mr. Chairman.

The CHAIRMAN. It strikes me that these figures have become astronomical.

Mr. O'CONNOR. They are.

The CHAIRMAN. As far as this service is concerned alone.

Mr. O'CONNOR. No question about it.

The CHAIRMAN. If \$50 is only 1 day, and you have these two tracks in your county, you say they run 3 months at a stretch?

Mr. O'CONNOR. I don't know because I don't go there, but I would believe that the racing season is more than 3 months.

The CHAIRMAN. Then they go to other parts of the country?

Mr. O'CONNOR. They go around the whole country.

The CHAIRMAN. So it is all year. If they pay—I can't envisage the amount. Mr. Foley says he has something.

Mr. FOLEY. Joseph Tollin testified right here in the District of Columbia in 1958 that he paid annually to one man \$10,000 plus expenses just to install the pitcher-catcher system. And he paid as much also as \$2,000 a week to maintain each pitcher-catcher team at a track. So you can imagine what he was making.

Mr. O'CONNOR. Incidentally, Mr. Chairman, that man Tollin was referring to was a man by the name of Charles Atlas.

Mr. CRAMER. This is also international, isn't it?

Mr. O'CONNOR. Yes, it is.

Mr. CRAMER. The information is available to anybody throughout the world who wants to put in a call?

Mr. O'CONNOR. That's right.

Mr. PEET. Mr. O'Connor, presently under the Internal Revenue Code, there is a requirement for gamblers to pay a special tax. Have gamblers paid that tax up in your county? Have many gamblers paid that tax?

Mr. O'CONNOR. I wouldn't have way of knowing. I really wouldn't.

Mr. PEET. Don't you make use of the information obtained when they register to pay that tax?

Mr. O'CONNOR. We would not do it. It would be a matter for the police department. I am sure that their gambling squads check up on that. We don't. I am not familiar with it at all.

Mr. McCULLOCH. Mr. Chairman, I would like to ask this question off the record.

(Off the record.)

Mr. CRAMER. That again comes into the basic concept I am concerned about as evidenced by title 1 of my bill setting up an office

within the Department of Justice that can acquire such information from Internal Revenue and disseminate it to local law enforcement officials on their request, under strict supervision of the Attorney General.

Isn't that a necessity? Wouldn't that be of tremendous assistance?

Mr. O'CONNOR. I think it would be of great help.

Mr. CRAMER. This is one specific piece of information that is not presently available.

Mr. O'CONNOR. That is right. I think it would make it available immediately and it would be a tremendous forward step.

Mr. CRAMER. Don't you have difficulties, which we have in some other places throughout the country, with these gangland style murders and crimes committed, where the hoodlums immediately go across State lines?

Mr. O'CONNOR. Oh, sure.

Mr. CRAMER. Therefore, you favor the proposal of the restriction of the use of interstate commerce for crossing State lines?

Mr. O'CONNOR. I think all of these bills in that direction are excellent. I think they would be a great help.

Mr. PEET. Mr. Chairman, I had one more question.

Actually, Mr. O'Connor, I addressed those basic questions to you to ask you whether or not you felt the provisions for the registration of intent to use interstate communications for gambling purposes would help you in law enforcement in your area.

Mr. O'CONNOR. I think it would be of assistance, yes.

Mr. FOLEY. Let me ask you on that very point: Since you are a prosecutor, an affidavit of intent that you are not going to use it for gambling purposes filed today certainly is going to be a weak basis tomorrow for a perjury charge or 6 months from now.

Mr. O'CONNOR. Any such statement, whether under oath or not, of intent to do a thing—

Mr. FOLEY. It is no good. It is some evidence, but it certainly isn't the best evidence.

Mr. O'CONNOR. Yet it would be of some assistance.

Mr. PEET. Actually there is a provision in this proposal, that if there is a change of intent, the individual must reregister within 10 days to reflect that change.

Mr. FOLEY. It is the repetition of intent. That is the bad feature of it. Why not say he will not use it?

Mr. CRAMER. There is nothing wrong with that.

The CHAIRMAN. Thank you very much, Mr. O'Connor. You have been very, very helpful in your telephone call. It was certainly a shock to us. We never realized the importance of the telephone system from this standpoint.

Mr. O'CONNOR. Thank you very much, Mr. Chairman.

Mr. McCULLOCH. Mr. Chairman, I would like to also say this off the record.

(Off the record.)

Mr. O'CONNOR. Thank you very much, Mr. Chairman.

The CHAIRMAN. You have justified the extravagant praise of Mr. Holtzman.

Mr. O'CONNOR. Even I have some reservations about that, Mr. Chairman.

The CHAIRMAN. Our next witness is Commissioner Donald S. Leonard, of Detroit, Mich., representing the International Association of Chiefs of Police. You may proceed, sir.

#### **STATEMENT OF COMMISSIONER DONALD S. LEONARD, ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE**

Mr. LEONARD. Thank you, Mr. Chairman, very much. I would like to identify myself. My name is Donald S. Leonard, of Detroit, Mich. I am a former commissioner of the Detroit Police Department and the retired commissioner of the Michigan State Police. I am also a past president of the International Association of Chiefs of Police.

I am at present chairman of their legislative committee, in which capacity I now appear before you. I wish, too, at this time to extend the thanks of the municipal and State police chiefs of this country, as represented by our association, for your courtesy in inviting us to appear before your committee and express some of our views.

Probably never before in the history of our country has the subject of crime, its causes, punishment, and prevention been more generally discussed than at present. The public consciousness is awakening, slowly though it may seem, but nevertheless certain, to a realization that one of the foremost problems confronting our Nation today lies in the repression of the criminal to the extent that life and property situated within this country may repose in that degree of safety as should properly be expected of one of the great civilized nations of the world.

The criminal has taken utmost advantage of a rather apathetic attitude on the part of the public, which it must be borne in mind reflects itself in the entire field of law enforcement activity.

The criminal, being more or less passively supported by those whom he plunders, has widened his scope of criminal activity with such rapidity as is not seen elsewhere in the world, and with such boldness that today not alone the private citizen but legislators, governmental officials, judicial officers, and police alike are subject to his depredations.

When any individual or group of individuals comes into competition with the authority of society itself, then government must strike back with vehemence in order to insure and maintain its very existence.

On this premise, we certainly place the approval of the International Association of Chiefs of Police in full support of this legislation designed to curb syndicated and organized crime and racketeering, especially on the interstate basis.

There is a maze of some 50,000 police units in the United States, each acting locally and independently, and with whatever spirit of cooperation as may be engendered by their leaders. They are pitifully unable to cope with the major type of crime operating as it does on an organized and syndicated basis.

I want to tell you that there is a fear of Federal action in the minds of many who would otherwise transgress the law. I was in one community in this country where the proprietor of a confectionery store had a baffle board, licensed by the city under a local ordinance; but he nevertheless paid a Federal gambler's tax because, even though he himself did not permit the use of the baffle board—

The CHAIRMAN. Excuse my ignorance, but what is a baffle board?

Mr. LEONARD. It is one of those coin-operated devices that you will find. The handle is pulled back and a ball bounces around on the numbers. It has different terminology around the country. Some use bowling or baseball games. It is an amusement device, but it can also be put to an illegal use by whoever is playing the game.

The point that I wish to stress here is that the proprietors of establishments who have these baffle boards or games within their establishment for a legitimate recreational purpose, nevertheless, in many instances, take out a Federal stamp or pay their license under the internal revenue law so that in the event customers use the baffle board to gamble, then the proprietor would not be guilty of violating Federal law.

I cite it merely for the purpose of showing that there is a fear of the strong arm of the Federal Government that has a very salutary effect.

The CHAIRMAN. How does the Federal Government get jurisdiction unless we provide that those baffle boards or games which are shipped across State lines, where the intent is to use them for gambling, would be made a Federal crime? That is the only way we could do it, isn't it?

Mr. LEONARD. That is correct. As I understand it now under the internal revenue laws, those who are engaged in this illegal activity, gambling, will pay their Federal tax as a gambler; and those who do not and in the event they are involved in a gambling operation may be subjected to the penalties of the law as far as the Federal Government is concerned under existing law.

These people who operate a baffle board under a local ordinance license, and who apparently are in the clear from any violation, because of the fear of a possible Federal prosecution in the event customers come in and gamble on their premises without the knowledge of the proprietor will pay the Federal tax anyway to keep them outside of this sphere of Federal prosecution.

I cite this merely to show that in the minds of many who would otherwise violate the law, there is the fear of this Federal prosecution. I might also take a moment just to parenthetically state that some years ago we had a bank held up—Congressman Meader is undoubtedly familiar with this—in Midland, Mich.

The bank which was held up was protected under the Federal Reserve System. It was a Federal felony to rob that bank.

During the course of the holdup one of the thugs by the name of Tony Chebatoris shot and killed a passerby on the street. This was murder under Michigan law. It was also murder under Federal law because the killing occurred in the perpetration of a Federal felony.

The question arose as to where the prosecution for the murder should take place—in Midland County, Mich., under State law against murder; or in the Federal court in Detroit.

The case was tried by the Federal authorities. Tony Chebatoris was adjudged guilty. The jury ordered him hanged, the penalty for that offense. The Governor of Michigan at that time appealed to the then President of the United States to transfer the hanging from Michigan, a noncapital punishment State, to Ohio, where they have the death penalty for those who committed murder.

The reply that went back to the Governor of Michigan was to the effect that "you can wash your own dirty linen," and a lot of people were bemoaning the fact that this would put a blot on the name of the State of Michigan to have a hanging because it is a non-capital-punishment State.

Two days after the hanging, which occurred in the Federal penitentiary in Milan, Mich., the incident was forgotten. But it is interesting to note that for many years thereafter there was a decided drop in bank robbery in the State of Michigan.

This is an example again of the many fields in which the Federal law enforcement officers—

The CHAIRMAN. Do you feel that the extreme punishment was a crime deterrent?

Mr. LEONARD. Yes. But even more than that, I believe that all of the elements of Federal prosecution were involved—the speed of prosecution, the conviction, the handling of criminal matters, and so on, which I think generally speaking are better disposed of under Federal procedure than in many States.

Mr. MEADER. Mr. Chairman, I have known the witness for many years. In fact, I believe when I was prosecuting attorney, he was either commissioner of the State police or at least high up in the organization.

All I think he is trying to tell this committee is that there is a respect for Federal criminal law which is a deterrent of crime. That is the point that he is trying to make. I think he has used some very good illustrations.

Mr. LEONARD. And which goes way beyond the effect of this legislation itself in providing the necessary support to local authorities in meeting their responsibilities as well.

Organized crime constitutes not only a menace to legitimate business and society, but also to Government itself. Crime is everybody's business, costing us \$22 billion each year. The coordinating facilities of the Federal Government can meet the organized racketeer on equal terms without doing violence to the jurisdiction of the States in the field of law enforcement.

Local crimes should be and are suppressed by local authority; but interstate or national crime requires the attention of the Federal Government in fulfilling its obligation to the States.

None of these bills before us now provide for exclusive Federal jurisdiction. Each State retains its own power to deal with the criminal, but State enforcement is enhanced by plugging up the loopholes used by crooks and racketeers to avoid State apprehension and punishment.

As long as we tolerate organized crime, the door is open toward the corruption of officials and the dangers of subverting Government itself. We must fight crime at all levels with every available weapon. Again, parenthetically, I was in a conference last week in Lansing

called by our own attorney general. Someone there, in talking about the juvenile delinquency program, stated that in a community a committee got together and provided a playground for the children.

After they put that playground into operation, they found that juvenile delinquency was reduced 50 percent.

So another member of the committee said, "Let's build another playground and eliminate it altogether." I don't believe that we could be that optimistic about this, but I do feel that all weapons are needed to combat the criminal successfully.

Local law enforcement agencies and methods cannot today cope alone with nationally and internationally organized crime syndicates. A combined attack by local and national authorities is imperative to public safety. Local law enforcement officials must be vigilant in arresting, prosecuting, and convicting individual operators. But the full force of Federal police agencies and legislation, backed by an enlightened and cooperative citizenry working in conjunction with State authorities, must be arrayed against those who do violence to our concept of law and order in dealing a death blow to the gangster-dominated and organized crime syndicates.

Mr. Chairman, I have some observations on a few of these bills which will not take too much time. H.R. 468—and I don't know whether I have all of the bills that are pertinent to the subject matter, but I have a few of them that were called to our attention. This is the one that amends the Fugitive Felon Act. We would suggest that in the substitution of crimes of a felonious nature described in this bill, those punishable with imprisonment by more than 1 year, instead of those specifically enumerated in the present law of arson, murder, so on and so forth, that some consideration ought to be given to changing the terminology "over 1 year" to "1 year or more."

This may be highly technical and it is my understanding in the Federal jurisdiction punishment in prison over 1 year will constitute a felony. But in many States the punishment for felony may be 1 year. It doesn't say "more than 1 year."

If the Federal legislation would be 1 year or more, then it would give much greater coverage to the fugitive felon law than the proposed legislation.

H.R. 3023 is the same as 468. So the comments will be the same there. H.R. 3021, amending chapter 95 on racketeering or interference with commerce by threats or violence, including obstruction, delays, or articles in interstate commerce by robbery, extortion, violence and so forth, by adding a new section, 1952, granting immunity to witnesses and requiring testimony and the production of papers.

Certainly we are in favor of this. The only question that has been raised by some police authorities around the country—and I heard a very interesting discussion concerning this this morning—is whether the immunity is broad enough to include State prosecutions. I know there have been instances in the State of Michigan under our former one-man grand jury law where immunity was granted to the lesser fry in order to get the major conspirators; and the question was presented later as to whether this immunized the State witnesses from Federal prosecutions, especially under income tax laws and so forth.

It was held there that the immunity did not extend to the Federal prosecution. It is my understanding, too, that under the constitutional powers of Congress immunity can be granted to the witness in

the sphere of legislation within the jurisdiction of the Federal Government.

I wondered in my own mind whether it wouldn't be better to put some clarifying language that would grant immunity under State prosecutions as well as Federal prosecutions so as to obviate any necessity of court determination of legislative intent at a later date.

H.R. 3246 I believe is the next one here and covers the interstate shipment of gambling paraphernalia by adding a new section, 1952. Certainly that would be of great help.

Many of the things relate to the numbers and policy rackets in violation of State gambling laws. The printing and interstate shipment of gambling material and policy books will be covered by this type of legislation. It would be of great help to the local law authorities in their fight against the gambling elements.

H.R. 5230 adds two sections, as you know—the conspiracy statute, and it includes organized crime offenses against the States when interstate commerce is used and conspiracy is effected. It includes the mailing or other shipment or communication or transmitting of any message or communication after such shipment.

Evidently the prerequisites are the conspiracy, the placing in shipment, and the communication after such shipment. There is a definition of organized crime, and it restricts the jurisdiction to certain offenses of gambling, narcotics, extortion, and intoxicating liquor, prosecution in criminal fraud of false pretenses, murder, maiming or assault with intent to do great bodily harm, and so on.

The question is raised as to whether pornographic and salacious literature should not be added to these specified crimes. We realize that there is some Federal legislation on that subject matter. This amends the conspiracy statute, and police authorities feel that it would be beneficial if we could include this fast developing racket of dealing in smut literature and cartoons and drawings, that it would place an added weapon at the disposal of the local and Federal authorities.

H.R. 6572 adds a new section to the racketeering provision of chapter 95 and defines unlawful activity as business enterprises, involving gambling, liquor, narcotics, prostitution, and so on. The jurisdiction for certain offenses on liquor and narcotics is given to the Treasury Department.

We are certainly very much in accord with this particular bill.

I went over H.R. 6571, and I believe some testimony was offered along the line of that this morning. But this involves everyone except the common carrier who knowingly carries or sends in interstate or foreign commerce any evidence of bookmaking, wagering pools on sporting events, and so forth. This again is typical of the type of legislation that we feel should be enacted.

H.R. 1246 concerning which Congressman Zelenko spoke this morning adds a new phrase to the coverage of testimony before congressional committees by including matters affecting interstate or foreign commerce under labor laws and the Nationality Act and so on. We feel that this certainly is something that would be very beneficial in curbing that type of racketeering. Although it isn't syndicated crime such as gambling, nevertheless it is a very nefarious undertaking that seems to thwart local prosecution.

It would enable the Congress to obtain information concerning these matters which would be of real help.

H.R. 3022 amends chapter 50, title 18, United States Code, on gambling by defining gambling information and other terms and also adds section 1084 by requiring gamblers paying special taxes under the Internal Revenue Code to submit affidavits where there is transmitted or received gambling information in interstate or foreign commerce.

It provides penalties for failure to file or for giving false information. Section 1086 prohibits the wire or radio common carrier from installing any equipment or providing service to any person whom it has reason to believe is required to be registered under section 4412(a) of the Internal Revenue Code of 1954 without informing the Department of Justice of the circumstances surrounding such belief.

This, as I interpret it, does not require the carrier to discontinue service, but would require them to give notice to the Department of Justice after local police had brought the suspicious circumstances to the attention of the carrier, and when they had reasonable grounds themselves to suspect that there was a violation.

After hearing the testimony this morning, I find myself quite in agreement with this. I thought perhaps that it might be beneficial if the legislation provided that no liability would be imposed on the carrier for submitting the affidavit as required under the legislation.

We have talked about civil suits on a State level when a telephone company or a wire service discontinued their service to a customer, and the regulations of the State public utilities or service commissions and the liability that might be imposed on the common carrier for severance of service. Immunity is given under certain circumstances from civil suits, but in this situation here where carriers notify the Department of Justice according to the act, it might be beneficial to immunize them from any damage suits for fulfilling the requirements of the statute.

Then H.R. 6573—I don't know whether that has been superseded by 7039 or not, but it adds a new section 1084 and enlarges the definitions on gambling. It provides penalties to persons who lease, furnish, or maintain any wire communication facility with intent that it be used for transmission of bets and sporting events and knowingly uses the service.

I believe that the terminology provides for "wire communications facilities" and it does not bring within its inclusion radio transmission. I think it is important that radio stations be included in this the same as wire communications facilities.

If service is discontinued after notice—I have had some experience in dealing with telephone companies and others on this over the years—I think that what concerns some of the people in the utility field is the unsupported allegation of a violation.

To get into a typical situation, someone might call the police department and say that at such and such an address "we believe that there is gambling going on or it is a bookie service or it is a numbers house" or something of that sort.

The police may have this matter under investigation and are trying to get somebody inside the place or get enough information to support a search warrant and raid the place.

But in the pendency of the investigation, in order to clear themselves as to taking proper action against the violator and the violation,

the police might then give notice to the telephone company of the suspected violation.

I presume the question would come up then as far as the utility is concerned: Is that sufficient to shut off the service, or not? We have heard a lot about tapping wires. Generally speaking, we are all concerned with any invasion of privacy on that score.

But if in companion bills you are going to provide for the judicial tapping of a wire, then when the utility is concerned itself—the telephone carrier—and has some knowledge brought to their attention by police agencies or of their own finding as to an illegal use, I thought perhaps this could be strengthened if the utility was empowered to tap the wire upon the obtaining of a judicial warrant so to do, so that they wouldn't be accused of eavesdropping or tapping.

Mr. PEET. Mr. Chairman, may I ask a question? Are you familiar with H.R. 6909, title 9 of which would authorize wiretaps?

Mr. LEONARD. No. I am not in this session. I have known of the past where this legislation has been proposed. I have been very interested in the subject matter because we had State legislation introduced in Michigan that didn't get through our legislature, but I have studied the matter of wiretapping for some time.

What does this do—authorize the wiretapping under regulation in certain circumstances?

Mr. PEET. In certain circumstances, yes. Please proceed.

Mr. LEONARD. Now that you have raised that question, I think I would speak the feeling of law enforcement agencies that such legislation, where under proper circumstances, either a judicial warrant to tap a line and preventing disclosure by any police officer to others than those engaged in the prosecution of the offender, would be of extreme benefit in investigating organized and syndicated crime and would save lives in connection with kidnap and murder cases and serious crimes of that sort.

Those were the bills that I had before me, and I would say in conclusion as far as I am concerned, that the local law enforcement agencies of the country, I feel, deem it imperative that the Federal Government lend every aid it can in the suppression of this type of crime that is under the jurisdiction of Congress, and that relates to the organized racketeering syndicated type of crime, because you are dealing with big operators who will maneuver and manipulate from one State to another. The forces of the State in which the transactions occur, are important in many respects, in dealing with the ones who pull the strings.

Mr. MEADER. I would like to ask a question, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. MEADER. Are you at all fearful that such legislation will encourage law enforcement officers to be lax in their duties and to be prone to permit the Federal Government to take over law enforcement in local communities all over the country?

Mr. LEONARD. No. I am not fearful of that in the least. I recall a little situation where some one was talking to a youngster about his fear of a swarm of bees. He said, "Look, I am not afraid of this bee that is hovering around me," the youngster said, "That is an individual bee but that am an organization over there."

I think we are talking about the organization that is beyond the ability of local law enforcement to investigate and punish for viola-

tions. I think this places needed legislation at the disposal of the Federal authorities. It makes amenable to law and justice and the protection of society, those who find a haven of refuge between State and Federal authority.

In direct answer, I am not at all fearful this would result in any lethargy on the part of any local officers. To the contrary, I think it would be inclined to step them up and peak them up a little bit, because they would realize they could call in Federal authorities for help.

When we stop to realize that thousands of police departments around the country—we are now talking about the little city operations; maybe the 10- to 25-member police departments—don't have the financial resources. They don't have the investigative facilities. They are unable to do the thing they would like to do because of the lack of personnel. In many instances, their officers are poorly trained because there is no facility for training the officer initially when he is recruited to the force. If they have the aid of just an investigative agency, such as the FBI stepping in those cases where the Federal hand is necessary, it will certainly support them. I don't think law enforcement will either withdraw its vigilance or active, energetic fight against those who may be reached on the local level.

**Mr. MEADER.** Summing up then, you have no fear whatsoever that these Federal aids will weaken or paralyze local law enforcement officials in their duty at the local and State level?

**Mr. LEONARD.** No, Mr. Chairman.

I was with the State police department some 30 years before I retired and took the position of police commissioner in Detroit. In the early days—Congressman Meader knows this—the fear was expressed this new State force would be dominant, and take over policing throughout the State, and would result in the very thing you are talking about with respect to the Federal and State situation now.

On the contrary, crime today, with all its ramifications—with ease of transportation and communications—is an entirely different matter than 20 or 50 years ago. It brings the methods of combating on different terms, with different weapons than we have ever had before.

There is hardly a murder case in the city of Detroit now, where one of the first things they do would be to notify the Michigan State police, because complaints and tips come in from all sections of the State relating to places outside the city.

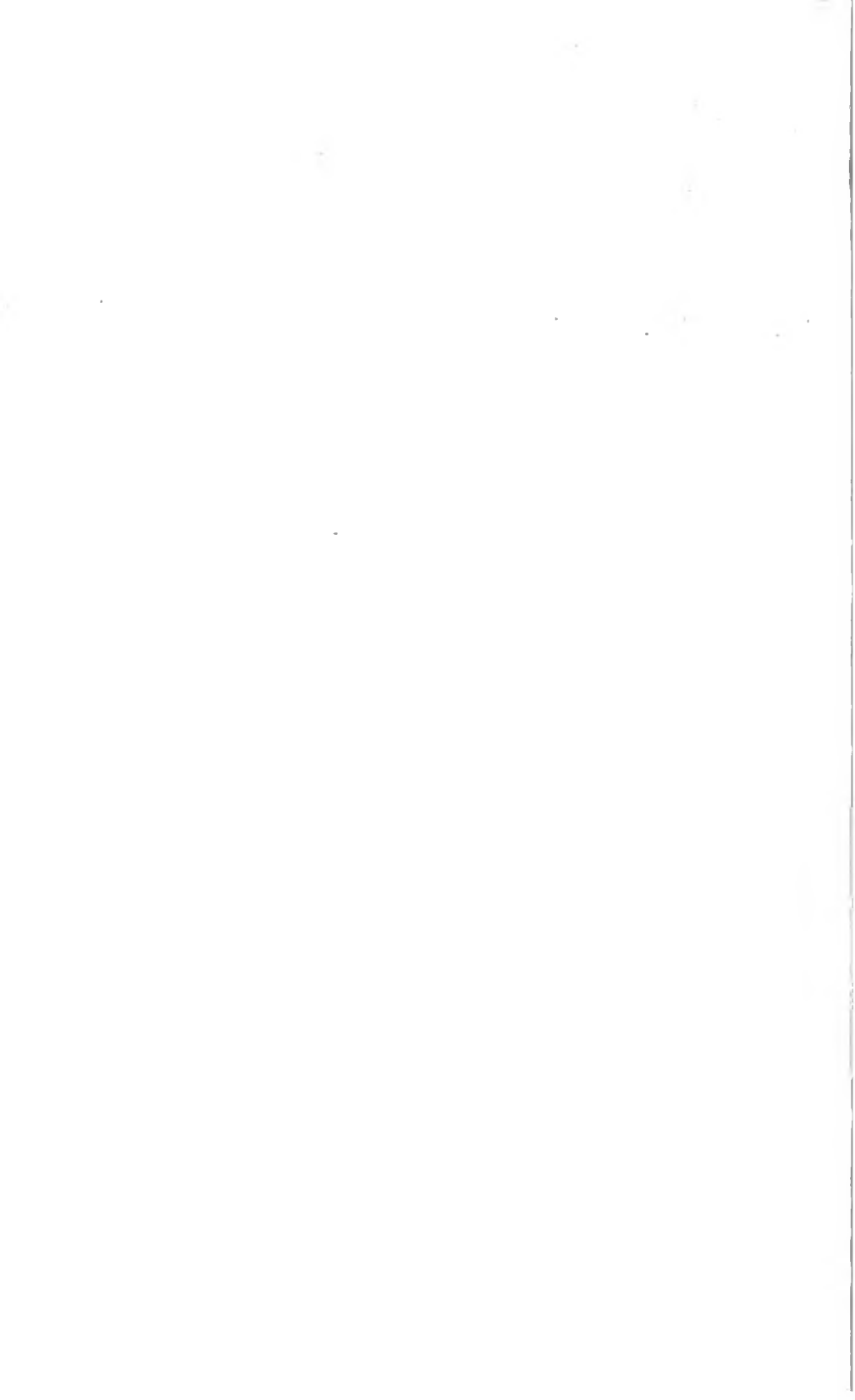
It is beyond the ability of the Detroit department to conduct an investigation in all areas of the State. With the same reasoning, crimes are committed within the State and there may be persons who should be contacted outside of the State.

Now, one of the deficiencies under the law at the present time, is that you cannot always get a Federal agency to conduct an investigation on a purely State crime, of a witness or person who has knowledge and is outside the State. Sometimes the officials within a State do not have the means of contacting local officers who should conduct the investigation elsewhere.

So that all of these steps that are envisioned in the passage of Federal legislation in the criminal field are very, very important to local law enforcement.

The CHAIRMAN. Thank you very much, Commissioner Leonard. We will adjourn now to 10 a.m., tomorrow, to hear from Nathan Skolnik, deputy commissioner, New York State Commission of Investigations; Robert Stinson, of Baltimore, Md.; Ed Silver, district attorney of New York City; and Arthur Christy, National Association of District Attorneys.

(Thereupon, at 3:30 p.m., the committee was adjourned until 10 a.m., Thursday, May 25, 1961.)



## LEGISLATION RELATING TO ORGANIZED CRIME

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THURSDAY, MAY 25, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE No. 5 OF THE  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Members present: Representatives Celler (chairman of the subcommittee), Rogers, Donohue, McCulloch, Holtzman, and Toll.

Also present: Representative William C. Cramer; William R. Foley, general counsel; Richard C. Peet, and William H. Crabtree, associate counsel.

The CHAIRMAN. Mr. Robert Stinson, of Baltimore.

Mr. STINSON. Yes, sir.

The CHAIRMAN. You represent the American Totalisator Co.?

Mr. STINSON. Yes, sir.

The CHAIRMAN. You might take your seat.

Mr. STINSON. Shall I proceed?

The CHAIRMAN. Yes, sir.

### STATEMENT OF ROBERT STINSON, ESQ., OBER, WILLIAMS, GRIMES & STINSON, BALTIMORE, MD., ATTORNEYS FOR THE AMERICAN TOTALISATOR CO., DIVISION OF UNIVERSAL CONTROLS, INC.

Mr. STINSON. I have submitted a prepared statement which I understand it would be appropriate for me to read at this time. This statement is submitted on behalf of the American Totalisator Co., division of Universal Controls, Inc., hereinafter referred to as American Totalisator Co., which furnishes totalisator equipment and service for parimutuel betting at many racetracks in the United States and also at racetracks in Canada, through a subsidiary, Mexico, Nassau, and Puerto Rico.

Parimutuel betting on horseraces has been legalized in 26 States, some of which have also legalized such betting on dograces, and very substantial revenues are derived by the States from taxes on racetracks and racetrack betting. The total revenues derived by the States from this source in 1960 amounted to \$280,090,378.72. American Totalisator Co. furnishes totalisator service and equipment at more than 150 racetracks in the United States and also at two jai alai frontons in Florida, the only State which has legalized parimutuel betting on jai alai.

The totalisator equipment furnished by American Totalisator Co. for parimutuel betting provides an electromechanical means of recording wagers and computing and displaying the total wagers, the odds on each entry, and the prices paid on the winning tickets, which is required by the laws of a number of States and by the racing commissions of some other States in order to assure accuracy and honesty in the handling of parimutuel wagers. Much of the totalisator equipment furnished by American Totalisator Co. is portable and is moved from track to track by truck, often across State lines.

In parimutuel betting, for which the totalisator equipment is used, the wagers on all entries to win are totaled in one pool and the odds on each entry to win are computed by deducting the State taxes and the track percentage, which are fixed by State law, from the total amount in the "win" pool, and then dividing the balance in the pool among the wagers on each entry. The wagers on each entry to place (second) and show (third) are also totaled in separate pools, and the odds on each entry to place or show are computed in the same manner.

H.R. 3246 and H.R. 6571, which are similar except for certain differences in language, would prohibit, among other things, the interstate or foreign transportation of paraphernalia used or designed for use in "wagering pools with respect to a sporting event." Since the totalisator equipment furnished by American Totalisator Co. is used and designed for use in parimutuel wagering pools at racetracks and jai alai frontons, it appears that the interstate or foreign transportation of such equipment would come directly within the prohibitions of H.R. 3246 and H.R. 6571.

It is assumed that these bills are not intended to prohibit interstate transportation of totalisator equipment used or designed for use where parimutuel betting is legal. It is respectfully suggested, therefore, that H.R. 6571 be amended as follows:

On page 2 at the end of line 7, change the period to a comma and insert after the comma, the following:

*Provided*, That the provisions of this section shall not apply to parimutuel betting equipment or materials used or designed for use at racetracks or other sporting events where betting is legal under applicable State laws.

The amendment of H.R. 3246 would be similar, except that the amendment would be inserted on page 2, at the end of line 4.

American Totalisator Co. is entirely in sympathy with the stated purposes of H.R. 6571 and H.R. 3246 to combat interstate crime and to assist the States in the enforcement of their criminal laws by prohibiting the interstate transportation of wagering paraphernalia. It is submitted, however, that prohibiting interstate transportation of totalisator equipment used or designed for use in parimutuel betting in the States where such wagering is legal under applicable State laws would be contrary to the interests of such States and would serve no purpose.

We will, of course, be very glad to furnish any additional information desired with respect to American Totalisator Co. and its totalisator equipment.

The CHAIRMAN. May I ask you, are there any other companies which make apparatus of the type you make?

Mr. STINSON. There are several other companies.

The CHAIRMAN. Would this language protect them, likewise?

Mr. STINSON. This language would protect all companies in this field.

The CHAIRMAN. Are there any racetracks where there is no parimutuel betting?

Mr. STINSON. I don't believe so, unless there may be some small fairs; but I don't think that there is any legal betting on horse races in this country that does not require parimutuel betting.

The CHAIRMAN. That is for the thoroughbreds and the trotters?

Mr. STINSON. Yes, sir.

The CHAIRMAN. How many States have parimutuel betting for dog races?

Mr. STINSON. There are about seven.

The CHAIRMAN. How many?

Mr. STINSON. Seven.

Mr. FOLEY. Do you have the names? Just read them.

Mr. STINSON. What I have here is a statement prepared by the National Association of State Racing Commissioners in regard to greyhound racing in the United States, as they call it and they include in their report, which I understand are all of the States, Arizona, Arkansas, Colorado, Florida, Massachusetts, Oregon, and South Dakota.

The CHAIRMAN. Is there dog racing in other States where they do not have the parimutuel arrangements?

Mr. STINSON. That may be true. That may be true. I am not sure that there is not—I know they used to have dog racing in Maryland but there was no legal betting on it so it soon faded out.

The CHAIRMAN. Now, this parimutuel betting equipment that is made by your company, is that apparatus transferred from one track to another, or does it remain permanently in the track?

Mr. STINSON. There are two parts of a setup, as operated by the American Totalisator Co.

There is what we call a permanent installation, which has to go into any track originally and consists of cables and various other apparatus and so forth, which stays at the track at all times.

However, the ticket machines which issue the tickets and the totalisator machines that total the tickets and are the real heart of the totalisator equipment, are moved from track to track. That is why this company was able to get started, because the—

Mr. ROGERS. Your company does not sell this equipment at all. They lease it?

Mr. STINSON. They lease it or furnish it as part of their totalisator service.

Mr. FOLEY. Is that true about all the other companies—your competitors?

Mr. STINSON. Well, one or two tracks have attempted to buy totalisator equipment but it has never worked out very well.

Mr. FOLEY. By way of background, this equipment was originally, I believe, made in Australia?

Mr. STINSON. The first totalisator setup in this country was the Australian totalisator that went into Hialeah Park in Florida.

The founder, or the main man in the background of the American Totalisator Co. was a man from Baltimore, Harry Straus, who is now dead. He invented a totalisator machine and equipment to compete with the Australian totalisator. It is not the same.

Mr. FOLEY. It is not the same totalisator?

Mr. STINSON. And the main advantage of his totalisator was that it could be moved from track to track.

Mr. TOLL. It is about the size of a typewriter, is it not?

Mr. STINSON. Something like that. The ticket machines are small—the size of a small typewriter.

Mr. TOLL. How about the man who adjusts the figures? Does he represent the company or the track?

Mr. STINSON. Who adjusts the figures?

Mr. TOLL. After each race.

Mr. STINSON. There is a totalisator machine which figures the odds. It totals the betting and figures the odds.

Now, we have—there are State auditors right on hand at every track and there is plenty of supervision of it.

Mr. ROGERS. Your totalisator machine, your machine even up to the window where they sell the tickets—they punch that; it goes in a cable and sets the amounts; that works automatically, doesn't it?

That is, when you purchase a \$2 ticket, why, that \$2 is registered automatically?

Mr. STINSON. That \$2 is registered in the totalisator equipment in the main totalisator room and it is all done automatically. That totals the pool and it figures the odds every half a minute or whatever it is.

Mr. ROGERS. What I was leading up to next is, how can your machines be manipulated to withhold the amount that may have been bet? In other words, many times, the favorite, for the fellow who claims he has the inside tip on the next race, he waits until about the close of the race; he runs to the window and throws his money down. How fast does your machine show it on the board?

Mr. STINSON. In practically no time at all. I mean, it all works in—

Mr. ROGERS. Does it work automatically?

Mr. STINSON. Automatically, yes.

Now, it used to be that the bets were recorded automatically when you punched out the tickets. The \$2 would be recorded in the totalisator equipment and it would only figure totals and then somebody had to figure the odds, and so forth; but now that is all done automatically.

The CHAIRMAN. Mr. Stinson, you represent the American Totalisator Co. Division of Universal Controls, Inc. What is Universal Controls, Inc.?

Mr. STINSON. Universal Controls is a company which bought the controlling interest in the American Totalisator Co. about 4 or 5 years ago. Prior to that time, the American Totalisator Co. had operated an independent company. In fact, I incorporated it in 1933 and our office has represented them ever since that time, but in 1955, I think it was, about that time, Universal Controls, which is a company listed on the American Stock Exchange, bought the controlling interest in the American Totalisator Co., which later merged with Universal Controls.

The CHAIRMAN. Are there any other apparatus or types of control, other than that attributed to the translator on race tracks? Are there any other types of controls owned by that company other than used at race tracks?

Mr. STINSON. No. Not that are used at race tracks. This is the only department or the only equipment that they have, as far as I know, that is used at race tracks.

Wait a minute. There is one thing. There is a General Register Co. that is also connected with it, that had something to do with it.

The CHAIRMAN. I see; because you use the words, American Totalisator Co., Division. I did not know what that meant.

Mr. STINSON. That is the name that they go under.

Of course, they have done their business under the name of American Totalisator Co. for many years. Actually, the corporate name is Universal Controls, Inc.

The CHAIRMAN. But then the Universal Controls is in other lines as well.

Mr. STINSON. It has other divisions and subsidiary companies and is in other lines.

The CHAIRMAN. Now, getting back to the language there which you suggest on page 3 of your statement, you say:

• • • *Provided*, That the provisions of this section shall not apply to parimutuel betting equipment or materials • • •.

What do you mean by "materials"?

Mr. STINSON. Tickets.

Mr. TOLL. You supply the tickets?

Mr. STINSON. We supply the ticket stock. The tickets are printed by the machine. There is a ticket issuing and printing machine, it is called. We supply the ticket material stock and that is put in the machine and when there is a bet, and the button is pressed, that shoots a ticket out which is printed partially at that time in order to minimize or prevent the possibility of forgery.

The CHAIRMAN. You also use the term "other sporting events where betting is legal."

Now, that is in addition to events where parimutuel does not apply?

Mr. STINSON. Well, it is not intended to read that way. It is intended to—

The CHAIRMAN. It is in the alternative, "or other sporting events where betting is legal under applicable State laws." In the forepart of your statement, you speak of limitation of parimutuel betting. Then as the second part, you speak of other sporting events. I take it that would be football or basketball or baseball, jai alai, where betting is legal under applicable State laws.

Mr. STINSON. Well, what was intended and the reason why "other sporting events" was put in there, frankly, was primarily because of jai alai.

The CHAIRMAN. Of what?

Mr. STINSON. Of jai alai. Jai alai is legal and parimutuel betting equipment is used for jai alai in Florida and that is the sole reason why other sporting events was put in there.

Mr. TOLL. Would it not be better to use sporting events and tie it in with parimutuel?

Mr. STINSON. I think it was intended to be tied in with parimutuel.

The CHAIRMAN. It is not. You have a loophole there.

You simply might use, materials other than your equipment for other sporting events where betting is legal.

I don't know what materials would mean, under those circumstances.

Mr. STINSON. Well, there are various materials that, as I say, there is the ticket stock. That is the main thing that I can think about. It did not seem to me that was covered by equipment.

The CHAIRMAN. In any event, your attention is to have verbiage that would be limited to the transfer across State lines of equipment to be used in States where parimutuel betting is legal and for such sporting events as come under parimutuel arrangements?

Mr. STINSON. Absolutely. We are not interested in anything except parimutuel betting equipment where it is legal and as I say, there have been an amendment similar to this put in several bills in the past none of which have actually become law, with the exception of the other sporting events provision, and that is new because jai alai is fairly recent. Prior to that, the totalisator was only in race tracks.

Mr. PEET. The parimutuel machine device is used in connection with gambling?

Mr. STINSON. Absolutely.

Mr. PEET. Title 5 of H.R. 6909 is a provision which deals with registration of devices used in connection with gambling.

Now, in conjunction with title 6 of H.R. 6909, which also deals with wagering paraphernalia, if an exception were put in title 6 which referred back to title 5 and excepted from the coverage of title 6 all gambling devices which are required to be registered under title 5 of 6909, would that not take care of the parimutuel exception that you are concerned with?

In other words, parimutuel machines, under title 5, would have to be registered under a procedure which would enable the Federal Government to keep track of them as well as all other machines used in connection with gambling.

There is a specific exception made in title 5 to allow for the shipment of gambling devices into States which legalize them.

The exception provided for in title 5, thus, would cover the exception that you want to make in title 6, dealing with wagering paraphernalia.

Mr. STINSON. I am not sure that I—

Mr. PEET. Have you ever had a chance to study the Attorney General's recommendations dealing with gambling devices which he submitted earlier this year—Attorney General Rogers?

Mr. STINSON. Not in that form. I read a lot of bills. I have not read that.

Mr. PEET. I believe that provision was rerecommended by Attorney General Kennedy, was it not, Mr. Foley?

Mr. FOLEY. What?

Mr. PEET. Did Mr. Kennedy recommend the gambling device?

Mr. FOLEY. H.R. 6909?

Mr. STINSON. There have been quite a few bills introduced in the House and the Senate that related to this general problem in the past 10 years or more, but none of them have ever been passed that I—

Mr. PEET. Thank you.

ORER, WILLIAMS, GRIMES, & STINSON,  
ATTORNEYS AT LAW,  
Baltimore, Md., June 6, 1961.

WILLIAM R. FOLEY, Esq.,  
General Counsel, House Judiciary Committee,  
House Office Building, Washington, D.C.

DEAR MR. FOLEY: I acknowledge receipt of your letter of June 2, 1961, enclosing a copy of the transcript of my testimony before Subcommittee No. 5 of the House Judiciary Committee at its hearing on May 25, 1961.

I have gone over this transcript and have made in pencil the corrections which I believe to be necessary or appropriate. I am returning the transcript herewith.

On page 512 of the transcript, it appears that I misunderstood the first question in regard to other types of controls "owned" by American Totalisator Co., and my answer is not responsive. However, I have not changed this answer because such a change would affect the continuity, and the requested information was given in answer to a later question.

During my testimony (p. 515), the chairman indicated that he thought the suggested amendment to H.R. 6571 and H.R. 3246 could be construed to apply to "materials" used at other sporting events where betting is legal, in addition to parimutuel betting equipment or materials. As stated in my testimony, this was not the intention, but any ambiguity can be removed by inserting "parimutuel" before "betting" in the last part of the suggested amendment, which would then read as follows:

"Provided, That the provisions of this section shall not apply to parimutuel betting equipment or materials used or designed for use at race tracks or other sporting events where parimutuel betting is legal under applicable State laws."

Very truly yours,

ROBERT STINSON.

The CHAIRMAN. Mr. Skolnik.

#### STATEMENT OF NATHAN SKOLNIK, COMMISSION OF INVESTIGATION, STATE OF NEW YORK

Mr. SKOLNIK. Mr. Chairman, may I first say that the chairman of our commission regrets very much that he could not be here this morning in person. We have been rather busy lately and the fact that he had been here 2 weeks ago on another matter, appearing before another subcommittee, made it relatively impossible for him to be here, and I have come in his behalf and in behalf of the commission, and we have a prepared statement. With your permission, I should like to read it at this time.

This is a statement of Chairman Goodman A. Sarachan on behalf of the Commission of Investigation of the State of New York, and may I just say also, at the outset, for the benefit of those gentlemen who do not know the fact, that we have a rotating chairman.

We have four commissioners. Every 6 months another commissioner becomes and acts as the chairman for the following 6-month period, so that every commissioner has the opportunity to be chairman. At this particular time, Commissioner Sarachan is the chairman.

I present it to you so you may know a little about our background.

I now proceed with Commissioner Goodman Sarachan's statement.

Mr. Chairman, at the very outset, I want your committee to know that the Commission of Investigation of the State of New York appreciates the invitation to appear at this public hearing and the opportunity to present our views on the very important subject concerning syndicated gambling and organized crime.

It has often been said in one form or another that gambling is the very heartbeat of organized crime. We subscribe to that statement. Authorities who have examined this problem agree that the best way to cripple organized crime would be to suppress gambling, thereby shutting off the most important source of criminal revenue. Much has been said and written about gambling and organized crime, but not enough has been done to furnish the essential tools to cope effectively with these nefarious activities.

As you gentlemen undoubtedly know, our commission recently conducted an investigation of syndicated gambling in New York State. It is interesting to note that in early 1959, in following up information involving a large dice game, as well as other forms of gambling, in Ithaca, N.Y., the commission's investigation was taken from town to town, from city to city, and from bookmaker to bookmaker across the entire breadth of the central part of New York, from Troy and Watervliet in the east to Buffalo and Jamestown in the west.

On October 23, 1959, at precisely 3 p.m., the Commission, in collaboration with members of the New York State Police, conducted raids across the central New York area in what can be described as the largest operation of its kind ever to take place in New York State. These were simultaneous raids in 30 communities covering 19 counties. Ninety-nine bookmakers and forty-six policy operators were arrested. All but a handful of these gamblers were apprehended within the first 10 minutes. Nearly \$100,000 in cash was seized. A mountain of evidence was obtained, including punchboards, policy slips, special dice and cards, football and basketball pool slips, horse parlay books, and other miscellaneous gambling paraphernalia.

Subsequently, the Commission's staff went through the laborious task of examining the documentary evidence and interviewing numerous witnesses. On the basis of this information, it reasonably can be said that the gross volume of money bet with bookmakers involved in these raids and in this limited area, would be about \$500 million per year with about one-tenth, or \$50 million, of that vast sum remaining in their hands as profits.

Mr. McCulloch. Mr. Chairman, I would like to make a comment on an extraneous subject at this time.

It would be my judgment that that \$50 million is more than the entire State of New York would get out of the proposed Federal aid to education bill that is now under consideration in the Senate.

Mr. Skolnik. Without making this narration too long, it should be further mentioned that a public hearing was held in April 1960 in relation to this investigation and, in February of this year, 1961, the Commission issued a comprehensive report in this matter. We men-

tion this only to illustrate the extent of syndicated gambling and the magnitude of such operations.

Mr. Chairman, at this time, I should like to offer for your file a copy of the Commission's report entitled "Syndicated Gambling in New York State."

(Retained in committee's file.)

Mr. McCULLOCH. I would like to interrupt once again.

I think this is an example of a magnificent job that you have done in New York.

Do you have before you the record of the number of arrests, indictments, trials, and convictions, of the people involved in this operation which you have just discussed?

Mr. SKOLNIK. I should be very happy to tell you and give you this information in detail, and whatever specific information, sir, that you may wish that I do not have at this moment, I should be very happy to furnish you forthwith.

The CHAIRMAN. Is it not all in the report called Syndicated Gambling in New York State?

Mr. SKOLNIK. Mr. Chairman, it is all in this report, but should this gentleman wish to be brought up to date as of this moment, we should be very happy to supplement it with additional information.

The CHAIRMAN. Yes.

Mr. McCULLOCH. I will be very pleased, Mr. Chairman, if it would be supplemented with the information that the gentleman would be able to get.

(The information filed is as follows:)

STATE OF NEW YORK,  
COMMISSION OF INVESTIGATION,  
New York, N.Y., May 29, 1961.

HON. WILLIAM M. McCULLOCH,

*Member of the House of Representatives of the United States, Committee on the Judiciary, Old House Office Building, Washington, D.C.*

DEAR CONGRESSMAN McCULLOCH: During the course of the appearance of our Deputy Commissioner Nathan Skolnik before your Committee on the Judiciary at the public hearing on May 25, 1961, you requested to be advised of the present status of the prosecutions pending against the bookmakers who were arrested in the central New York raids on October 23, 1959.

Since the date of the issuance of our "Report on Syndicated Gambling in New York State (February 1961)," we find that the situation as stated on page 9 of said report has changed as follows:

(1) William Estoff of Syracuse, N.Y., pleaded guilty to the charge of bookmaking and was fined \$500.

(2) Twenty-six gambling cases were dismissed in April of this year by the courts in Rochester and Syracuse, N.Y., respectively; 25 were dismissed in Rochester, and 1 case was dismissed in Syracuse. In both areas, it is apparent that the district attorneys did not move the cases for trial because they felt it would not be safe to introduce evidence obtained from wiretaps. Enclosed are thermofaxed copies of newspaper reports relating to these dismissals.

Accordingly, at the present time, it appears that there remain 16 cases awaiting trial or other disposition by the court. We are transmitting herewith a copy of our report on syndicated gambling for your files.

We trust that we have furnished you with the information you sought.

Very truly yours,

GOODMAN A. SARACHAN, *Chairman.*

[From the Binghamton Press, May 10, 1961]

## WIRETAPS VITAL, SENATORS TOLD

WASHINGTON.—A New York State official told the Senate Constitutional Rights Subcommittee today that wiretapping is an essential tool to help put the cunning modern criminal behind bars.

Goodman A. Sarachan, chairman of the New York State Investigations Commission, said law officers must have the right to tap wires if they are to capture the men at the top of the criminal syndicates.

In testimony before the Senate group, Sarachan called on Congress to lift the legal cloud covering taps made in conformity with State law.

He said hundreds of criminal prosecutions have been held up while Congress considered amending the Federal Communications Act.

To emphasize the necessity for tapping, Sarachan said 25 gambling cases were dismissed 3 weeks ago in Rochester because the district attorney felt it would not be safe to introduce wiretap evidence.

Brooklyn District Attorney Edward S. Silver also opposed new Federal restrictions on police wiretapping on grounds it would hamper the fight against organized crime.

Senator Kenneth B. Keating, Republican, of New York, yesterday urged prompt action on a bill he drafted that would legalize the present practice in States such as New York.

The Federal Communications Act prohibits the interception and divulgence of telephone conversations. However, some States, including New York, have laws permitting wiretaps by law-enforcement officers when authorized by a court.

Keating said that under Federal law the divulgence of wiretap evidence at a State trial is a crime even when the tap was authorized by a State court order.

Under a recent ruling of the Supreme Court, however, a State is free to adopt a policy of admitting such evidence in criminal prosecutions, he said.

Confronted with this dilemma, Keating said, some judges in New York have refused to admit wiretap evidence in State court prosecutions even though the evidence was obtained under a court-approved warrant.

Keating's bill would permit wiretapping upon a finding by a State court that reasonable grounds existed for believing that such interception might disclose evidence of the commission of a crime.

[From the Syracuse Herald-Journal, Apr. 20, 1961]

## WHY WAS BOOKIE CASE DROPPED?—REQUEST FOR ADJOURNMENT? THEY DO IT ALL THE TIME

(By Howard J. Carroll)

Postponements are the rule rather than the exception in many police court cases because attorneys—most of the time it is the defense attorneys—are busy in other courts.

Criminal cases in other courts—county, State supreme, and Federal—have preference over police court.

This is why court observers expressed amazement when Police Court Judge P. Leo Dorsey tossed out one of four much-publicized gambling cases because the prosecutor asked for an adjournment last Tuesday.

The case involved Benjamin Scornick, 64, of 2417 East Genesee Street, who was charged with bookmaking as the result of State police gambling raids in October 1959, when more than 100 persons were arrested and charged with bookmaking in an upstate crackdown on illegal professional gambling.

Scornick's case and those of three others rounded up in the statewide raids here had been postponed at least a dozen times, sometimes at the request of the defense and other times by the prosecutor.

Other times both sides would agree to adjournment.

From the time Scornick was arraigned on October 24, 1959, until the case was thrown out last Tuesday for failure to prosecute, the case had been postponed first at the request of Saul Kaufmann, defense attorney; then by former Assistant District Attorney Anthony Langan; and several times by the agreement of both attorneys.

When Assistant District Attorney Irwin Birnbaum requested an adjournment so that the case could be turned over to the grand jury, Dorsey granted a defense motion to dismiss the case for failure to prosecute.

Dorsey explained in dismissing the charge that the case was set down for trial and that the "defendant is ready and the people are not ready, and in fairness to the defendant who is here ready for trial today, I have granted the motion to dismiss for failure to prosecute."

Dorsey, in elaborating on his decision to throw out the case, told the *Herald-Journal* that he has had to dismiss at least 11 full jury panels so far this year for one reason or another. Usually it is because the charges are dropped by the prosecutor, he said.

Dorsey said dismissal of the panels—about 30 are called each time to select a jury of 6—is expensive and at the same time results in an inconvenience for those called to serve. Jurors are paid \$1 a day when they do not serve and \$5 daily when they work.

A similar incident occurred in police court last week when the second of four defendants in the State police gambling raids, William Estoff, 54, of 838 Lancaster Avenue, pleaded guilty to a charge of bookmaking.

The panel of jurors was waiting in the courtroom on April 11 in the *Estoff* case and the case was not heard on that day.

The following day, however, Estoff pleaded guilty to the charge. He was fined \$500 and given until last Monday to pay the fine. Dorsey said the fine was paid.

In passing sentence, Dorsey said that he had a presentence report on the defendant, "and find that Mr. Estoff has nothing on his record—no previous convictions." Dorsey added:

"He's never been in this court before—in fact, he's never been in trouble before, and that is the reason for my disposition of the case this morning."

Police department records disclose, however, that Estoff was arrested and charged with bookmaking on June 20, 1950. He was fined \$200 on June 20, 1950, on the charge and given a 30-day suspended sentence according to police records.

Asked what his presentence report included, Dorsey answered: "I checked the records in front of me and in court." He said he did not check police department records.

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[From the *Syracuse Post Standard*, Apr. 19, 1961]

#### DA FAILS TO PROSECUTE, BOOKIE SUSPECT FREED

A bookmaking charge against Benjamin Scornick, 65, of 2417 East Genesee Street, arrested in October 1959 as a result of a State crime commission gambling probe, was dismissed in police court yesterday because of failure to prosecute by the district attorney's office.

The case had been postponed 12 times since it first came before the court in 1959. Court records indicate the postponements were at the request of the defense attorney. The postponements were granted pending the outcome of a decision on the admissibility of wiretap evidence.

The case was scheduled in court again yesterday and Scornick, his attorney, and a panel of prospective jurors were on hand.

Assistant District Attorney Irwin Birnbaum asked for a postponement, the prosecution's first, until late May. The postponement was not requested because the case was not ready but because Birnbaum wanted to move it over for grand jury action.

At this point, Scornick's attorney asked for a dismissal on the grounds that the district attorney's office was failing to prosecute and Justice P. Leo Dorsey granted the motion.

Scornick was one of four men arrested here on gambling charges as a result of the commission probe. William Estoff of 838 Lancaster Avenue, pleaded guilty in police court last week and was fined \$500 and given a suspended 30-day jail sentence.

At that time Justice Dorsey indicated that he would demand the oft-postponed gambling cases be tried as scheduled and would frown on further postponements.

Birnbaum said he would ask for an appeal from Justice Dorsey's decision.

District Attorney Joseph A. Ryan, commenting on the developments, said last night, "I think that if a defendant is entitled to 12 postponements it would seem to me that the prosecution should be entitled to at least 1 in view of the fact that the prosecution was going to the grand jury with the case."

Mr. SKOLNIK. Without trying to digress from the subject, I should like to say there is a little problem that has crept into this particular subject relating to convictions.

You may have been following the newspapers with respect to some of these arrests and prosecutive actions in New York. Perhaps you may have read or heard that several indictments and several complaints were dismissed because of lack of prosecution, and that the lack of prosecution was based on the fact that wiretap evidence was involved and the district attorneys were fearful of proceeding with those cases. That is a separate subject, but I think it comes sufficiently within this particular area to be mentioned at this time.

Mr. McCULLOCH. I certainly agree with you, and would be glad if you would furnish that information because it all has bearing on our problem and how we should attempt to solve it.

Very well.

Mr. SKOLNIK. Mr. Chairman, is this report received, sir?

The CHAIRMAN. That will be accepted and filed.

Mr. SKOLNIK. Thank you very much. I hand it to your reporter.

Suffice it is to say, the commission has obtained much valuable information concerning illegal gambling in New York State. Particularly, several very significant facts emerged from our investigation. The first is that bookmaking is the heart of illegal gambling. Second, bookmaking is the most common and representative form of gambling, attracting players from every level of the community. And third, the bookmaker cannot operate alone, requiring, to a greater or lesser extent, a syndicate or organization and related services. When we speak of a bookmaker we do not relate him only to horse racing. Bookmakers also handle baseball, basketball, football—both collegiate and professional—hockey, and boxing. There are three services which are vital to the success of a bookmaker. Indeed, his very existence is dependent on receiving fast, accurate outside services for such necessary aspects of his illegal activity as (1) "the line." This is the points and odds on athletic contests. (2) "Layoff bets": This is a system of covering or insuring the bookmaker's operations to prevent financial disaster upon a certain result; and (3) quick race results.

These indispensable services which keep bookmaking alive and flourishing come from different parts of the United States. These services include wire communications and the transportation of gambling equipment and paraphernalia in interstate commerce.

The CHAIRMAN. At that point, we had the testimony yesterday of an official of the Bell Telephone System—the American Telephone & Telegraph Co.—and he indicated that he was loath to have placed upon the telephone company the burden, for example, of reporting to the constituted authorities, back to your own crime commission or to the peace officers, suspicious information concerning the communication of very essential track-site information. Now, do you feel that the telephone company, which is a very important facility for gambling syndicates, and very essential to its operation, should be placed under some sort of sanction if they do not cooperate with an organization like your own or with the police officers by giving you the information that they may have in their possession?

Mr. SKOLNIK. Mr. Chairman, of course, we all realize that very question is a rather extensive one. We realize the position of the

telephone company in that it is a business operation, and no person or no corporation business likes to sort of squeal—if you want to use this very harsh word—on its customers. Yet, we have got to realize that the telephone at this time, in my opinion, is the most important instrument and device of bookmakers and this form of gambling. Without the telephone I daresay they would be hamstrung to the point of perhaps curtailing their business, and maybe many of them would be forced out of business.

Therefore, I think some sort of policy might be devised, in its early stages, as a form of self-regulation, whereby the company might feel obliged in certain cases, where there is a great abundance of telephone calls, where they have every reason to know and believe that their wires are being used for illegal purposes, to come forward, as we ask any decent citizen to come forward, where he suspects certain crimes are being carried on, to present what proof or what information this company has to the appropriate authorities for their consideration.

The CHAIRMAN. Then your answer to my question is "Yes"?

Mr. SKOLNIK. Yes, sir; but in a limited way.

Mr. ROGERS. I am not so sure the answer is "Yes." The witness spoke of self-regulation.

Mr. SKOLNIK. Yes. Perhaps at the very beginning, since this is something new and since this is such a big company and I realize the responsibilities that will be placed and the obligations that will be placed upon this company if we say, you have the burden; if you don't undertake to do it properly and fully, we are going to impose sanctions.

Mr. McCULLOCH. Mr. Chairman?

The CHAIRMAN. Excuse me. If you don't impose sanctions, it is not worth a tinker's damn.

Mr. SKOLNIK. I agree with you, sir.

The CHAIRMAN. So your answer is "Yes," they should and must do it?

Mr. SKOLNIK. In a general way, my answer is "Yes."

The CHAIRMAN. Don't qualify it. It is either "Yes" or "No."

Mr. SKOLNIK. The answer is "Yes." The qualification goes to the manner in which it should be approached or done, since this is a relatively new avenue.

The CHAIRMAN. You must remember, the American Telephone & Telegraph Co. is a legal monopoly and is immunized from competition. Its rates are fixed so it will not suffer any losses.

Under those circumstances, because of those advantages that it gets from the public it should shoulder a counterpart responsibility to the public and to protect the public and if it has information it should disclose it; information that is of the type that your report very graphically describes and you indicate that the very keystone of this syndicated gambling is the telephone or wire communication.

When I speak of the telephone company, that applies to all wire communications—Western Union, television and every media of communication, possibly with the exception of newspapers, but even a newspaper; I think the editors and publishers ought to exercise a greater degree of public responsibility in this regard; a responsibility which I find they do not shoulder; but however, that is another ques-

tion. But your answer to my question is "Yes," unqualifiedly. Am I right?

Mr. SKOLNIK. That is correct, sir. The only qualification—I want to make it clear—is the fact that since this is a new obligation, perhaps it might be considered as a second step affair, but the answer still remains, "yes."

Mr. McCULLOCH. Mr. Chairman?

The CHAIRMAN. I am sorry.

Mr. McCULLOCH. That is all right.

I would like to make this comment: I particularly appreciate the last statement that the witness has made. As I read the testimony of the official of A.T. & T. yesterday, I did not conclude that A.T. & T. objected to a proper burden that might be placed on it by the law, but it did object, did possibly object, to certain penalties for failure to act in accordance with a requirement of law.

I join with much, if not all, that the chairman said in this field. It seems to me that there is an important obligation on public utilities in the communications field to be helpful toward the public.

Under the Anglo-Saxon system of jurisprudence and our grand jury system, both at the State and at the Federal level, there is a duty on law-abiding citizens to report violations of law to duly constituted authorities, such as States' attorneys, prosecuting attorneys, U.S. attorneys, and to grand juries, both State and Federal.

If such organizations fail in such duty they will find, sooner or later, an imposition of positive action on them, followed by penalties, if they do not comply with the law.

The CHAIRMAN. It is interesting to note that the American Telephone & Telegraph Co. is now approaching the point where it has probably 2 million stockholders. That, to my mind, widens its obligation to cooperate with the police officers and the peace officers and crime commissions like your own, to insure the public that it is in some way being protected against these illegal operations and these syndicates.

You might proceed.

Mr. SKOLNIK. In this connection, it also must be realized that the most useful modern device employed by bookmakers in the furtherance of their illegal business is the telephone. Although this may not be an area of special concern in this public hearing, we cannot permit this opportunity to pass without emphasizing the need for clearing up the confusion and dilemma arising out of the present state of the law regarding wiretapping. On May 10, 1961, I appeared on behalf of our commission, here in Washington, before the Senate Subcommittee on Constitutional Rights to urge the passage of appropriate legislation which would permit wiretapping and the disclosure of information obtained therefrom, of course, under the careful restrictions and safeguards of our State laws.

Returning to the subject of gambling and organized crime, we respectfully direct the attention of this committee to the recommendations contained in our report on syndicated gambling. On pages 122 and 123, we recommend, among other things, enactment of certain proposed bills, introduced in the 86th Congress, 2d session, which would have prohibited the transmission of general gambling information by means of interstate communication facilities; also, they would have broadened the effect of the present Federal statute prohibiting

the transportation of gambling devices in interstate and foreign commerce.

Mr. Chairman and gentlemen of this committee, the members of our commission feel very strongly that the time has come for a supplementation of words and discussions as to how to combat syndicated gambling and organized crime, with straightforward and definitive action. Positive steps should be taken in every direction and every legal means and device should be utilized to attack and eradicate this criminal menace from our society. Enforcement officials must be given the encouragement to pursue this task and the implements to accomplish it.

There are several bills presently under consideration by this committee which would be of immeasurable help to law enforcement officials. In substance, they would cut off from the professional gamblers the vital interstate services and supplies upon which these gamblers rely for their existence; they would also facilitate prosecutive action against violators of the gambling laws. We respectfully offer our support and urge that such bills be enacted.

The CHAIRMAN. Have you examined those bills minutely? You are a lawyer, are you not?

Mr. SKOLNIK. Yes, sir. I am, sir.

The CHAIRMAN. Have you examined those bills minutely? Do you feel that they would stand the constitutional test?

Mr. SKOLNIK. Well, let me answer that question in a twofold manner.

First, I have examined them; and second, while I can give you my opinion, you are asking me a rather difficult question as to whether they will withstand the constitutional test.

I can only say this—not by way of hedging; only on the basis of my experience—that when you deal with gamblers, professional gamblers, and people of that type, and who can readily afford legal services, and the sky is the limit as far as fees are concerned, it is a big road ahead. It is a big battle. They are certainly going to try to attack every comma and phrase in it, and while in my offhand opinion at this moment, by and large, I think they will withstand that attack—

The CHAIRMAN. Are you sure of that? Have you examined them carefully?

Mr. SKOLNIK. When you say, am I sure of that—

The CHAIRMAN. I mean—I withdraw that.

Have you examined some of these bills? Of course, these bills have been offered and I offered some because they were embodied in what we call executive communications; but frankly, some of them have been inexpertly drawn—probably in an eager desire to stamp out crime, organized crime; and enthusiasm got, probably, the better of the judgment of some of those who fashioned these bills.

We members of the Judiciary Committee must be very careful when we present bills, so as to make them watertight in a constitutional sense. While I offered the bills myself, I did it with my tongue in my cheek, because I really felt some of them were so vaguely drawn as to violate due process.

I don't want to burden you at this moment, but I would like, if possible, for you to examine those bills carefully and give us a report as to what you think about these bills from a constitutional point.

Mr. TOLL. Mr. Chairman, may I raise a question?

The CHAIRMAN. May I get a response from the gentleman?

Would you care to do that?

Mr. SKOLNIK. As a matter of fact, we would be very happy to do anything to be of service to this committee in this particular problem which is very close to our hearts.

The CHAIRMAN. Will you submit a supplemental statement along those lines?

Mr. SKOLNIK. I shall be very happy to reexamine these and give you our views.

The CHAIRMAN. The reason I ask it is because the New York State Crime Commission has done an admirable job and we value any opinion that representatives of this Crime Commission submits to us.

Mr. SKOLNIK. Parenthetically—

The CHAIRMAN. We would like to have you strain these bills and give us the benefit of your good counsel and advice on them.

Mr. SKOLNIK. Parenthetically, may I say, Mr. Chairman, with respect to our proceeding against some of those who attended the Appalachian meeting, as you may well remember, there was one section of the Civil Practice Act involved, section 406, and with respect to a great many of those particular individuals, we had to go up to the Supreme Court on every motion we made and I am talking about the U.S. Supreme Court, not the Supreme Court of New York County.

The CHAIRMAN. Well, one of these bills is fashioned to go after this Appalachian gang—

Mr. SKOLNIK. Yes.

The CHAIRMAN. It is difficult, very difficult, to draft legislation along those lines. That is why we want to get from all responsible sources, as much information as we can get; as much advice as we can get. I feel very humble about this thing. I would not want to be dogmatic in any sense of the word. We like advice and help. We need help. So if you will submit a supplemental brief, we would be very happy.

Mr. SKOLNIK. We shall do so.

Mr. McCULLOCH. Mr. Chairman, in view of the statement I made a few moments ago, and in a desire to be completely fair to A.T. & T., and other communication common carriers, I wish to read into the record at this point, a paragraph from the report by Senator McFarland, under date of May 26, 1950, in Report No. 1752 of the 2d session of the 81st Congress and I quote from page 20:

Thus, the communications common carriers are the instrumentalities through which racing information is widely disseminated, and they have important economic interests in maintaining that business. A.T. & T. has testified on numerous occasions, that it is not interested in this business; that it does not want it. What they refer to, of course, is the transmission of racing information to bookmakers for illegal purposes and there can be little question that A.T. & T. itself, does not solicit that kind of business. The evidence, however, also discloses no serious affirmative efforts by the telephone companies to divorce themselves from their business either on a local or interstate basis. As to Western Union, that company makes no secret of the fact that so long as it remains a legal business, they intend to supply the facilities to carry it out.

I think that is a very important paragraph to have in the record in this case and it again calls upon the Congress for action in this field.

Mr. SKOLNIK. In connection with the statement you just read, Congressman McCulloch, I direct your attention to the few remarks we have on that particular subject, which may be found on page 39 in our report.

Mr. TOLL. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. TOLL. In connection with your investigations in New York, do you have to resort to wiretapping to get the information about gambling?

Mr. SKOLNIK. Well, Congressman Toll, may I say this.

Without wiretapping, very little could be done in this particular area.

Mr. TOLL. How long has your Commission been in existence in the State of New York?

Mr. SKOLNIK. Since May 1, 1958.

Mr. TOLL. Since 1958.

Did they have any similar Commission in New York, prior to 1958?

Mr. SKOLNIK. Yes, they did. They had a commissioner of investigation of the State of New York going back to Commissioner Herlands; and then Commissioner Shapiro; then we had Commissioner Reuter, who was the acting commissioner, then we became the successor agency.

Mr. TOLL. Do you know whether the prior groups were able to disclose gambling or syndicated gambling without the use of wiretapping?

Mr. SKOLNIK. I do not think so. I do not think they would be able to do that, if that is a more positive answer.

The CHAIRMAN. Of course, you know, I do not want to enter the subject of wiretapping. Judges Hofstadter and Davidson have indicated that, because of the widespread abuse of the use of wiretapping—allegedly legal—that they refuse to sign any more orders permitting wiretapping in the State of New York.

Are you aware of that?

Mr. SKOLNIK. I am aware of the fact they issued statements that they were disinclined or perhaps would not sign such orders, but I was not aware of the fact they said—

The CHAIRMAN. Davidson went further. He said he would absolutely refuse to sign any more orders because of abuse.

Mr. SKOLNIK. I am not aware of the fact they predicated their refusal upon the abuse or any facts that would indicate that there has been an abuse. It is my understanding that they were more or less disinclined to sign orders because of the confusion arising out of the U.S. Supreme Court decision in the *Benanti* case and those that followed it.

Mr. FOLEY. There is no confusion now as to the use of wiretap evidence in the State of New York, is there?

Mr. SKOLNIK. I think the same confusion exists.

Mr. FOLEY. You don't think that last decision in that Bronx case cleared it up?

Mr. SKOLNIK. In *Pugach* against *Dollinger*? I don't know how it has eliminated the confusion. All the court did was to refuse to grant an injunction; and they said go ahead; proceed with the trial; we will see what we will do about it later.

But in the meantime the district attorney and every law enforcement officer is still on the spot as to what may happen to him if he violates the law.

Mr. FOLEY. Pugach was convicted, was he not?

Mr. SKOLNIK. Yes.

Mr. FOLEY. And wiretap evidence was used?

Mr. SKOLNIK. Sir, that still didn't remove, nor does it remove, the possibility of prosecution with respect to those who have used wiretaps and disclosed the information. There is still a violation of the law.

Mr. FOLEY. Even though it is Federal prosecution?

Mr. SKOLNIK. It is still a prosecution. A Federal officer can do a lot of things to you. The Federal jails are filled with prisoners on Federal violations.

Mr. FOLEY. But a State official in the capacity of prosecuting a criminal case uses wiretap evidence.

Mr. SKOLNIK. The fact is that many district attorneys in New York State have refused to proceed even when they already have such evidence in their files, with the result that defendants have been let out, and others refuse to proceed, in important cases, to obtain such evidence where they know it exists.

That is the situation that we now find in New York State.

The CHAIRMAN. I don't want to go into that at this time. We will have hearings on wiretapping later. Mr. Foley wants to ask some questions.

Mr. FOLEY. Mr. Skolnik, in reading your report, of course, I am well aware of the Wilmington, Del., wire service. I am referring to the Delaware Sports Service in Wilmington, Del.

Mr. SKOLNIK. The Delaware Sports Service run by the Tollins.

Mr. FOLEY. Yes. That is what we understand to be a wire service. It is a business organization furnishing gambling information.

Mr. SKOLNIK. Strictly a wire service and not associated with any sporting service.

Mr. FOLEY. Has it come to your knowledge that there exists any other such enterprise as that one?

Mr. SKOLNIK. Yes. If you will look in our report we have found what we consider perhaps competitors of the Tollin service, in one or two respects. I can find it for you in a minute in our report. Somebody who worked for Tollin branched out and opened up his own service.

Mr. FOLEY. They were rather limited in geographic area; they weren't big like Tollin?

Mr. SKOLNIK. I can give you a few names of some services we found doing the same work. The Mid-Town Journal in Boston, Mass.; the Atlantic Carriers in Boston; and, of course, the Armstrong publications, who furnished the same sort of a service. Any one of the subscribers, anyone who purchases their publications, can get the free telephone service from them by calling any one of their many offices.

Mr. FOLEY. In other words, you subscribe to their daily sheet, in the parlance of the street?

Mr. SKOLNIK. That's right.

Mr. FOLEY. Then you can also obtain it on a regular subscription basis. That includes wire service just the same as comes out of Wilmington, and out of these other outfits in Boston?

Mr. SKOLNIK. That is correct, sir. I refer you gentlemen, in case you want to follow this discussion, to pages 38, 39, and 40 of our report. We have a little section on just what we found. May I say this, for your information: We didn't get the facts relating to this Delaware Sport Service from reading reports or from talking to anyone; we were actually there. We had one of our assistant counsel visit Mr. Tollin, and we perhaps caught him on a very, very bright day when he was in a good mood, and he did something quite unusual. He took us around.

When I say "us" I was not there, but I got this firsthand from our assistant counsel. He took us around and showed how the place looks, how it operates, and permitted our staff members to stay there and watch how he attends customers during a given race.

The CHAIRMAN. Is the Nationwide News Service, Inc., still operating?

Mr. SKOLNIK. That is in Chicago. Is that correct, sir? It was operating last year. Here again our representative spoke to Mr. Sam Marcus of that company, who gave us some personal information.

The CHAIRMAN. Is the Continental Press Service still operating?

Mr. SKOLNIK. No.

The CHAIRMAN. That was Annenberg.

Mr. SKOLNIK. That was Annenberg's outfit. Here again you will find on pages 38 to 40 a complete statement as to what happened to that company. That was eventually, we think, taken over by the Capone mob; and Federal authorities were quite instrumental in putting them out of business.

The CHAIRMAN. Is the Continental Press Service still operating? You refer to that on page 39 of your report.

Mr. SKOLNIK. Continental is out.

The CHAIRMAN. That is the one I mentioned; I beg your pardon.

Mr. SKOLNIK. Yes, they are out.

Mr. FOLEY. S. & G. is out, too. That is the old one which competed with Continental for a while.

Mr. SKOLNIK. Yes, that's true.

Mr. FOLEY. Are any of these, do you think, today as big as Continental was when it was taken over by the Capone mob?

Mr. SKOLNIK. It is very difficult when you ask me are they as big, because you must remember, even though we did walk into the premises and we did speak to the owners, they were very cautious when it came to asking the names of customers or to look at books.

I might say it was rather surprising and phenomenal that we did manage to obtain the information that we do have. So, in answering your question, I am inclined to say, well, maybe not quite as big; perhaps not. But those that we have are big enough to service the thousands of bookmakers throughout the country.

The CHAIRMAN. Armstrong Publications send out these sheets. Do they use the mails for that purpose?

Mr. SKOLNIK. I believe they do. They distribute some of these sheets by mail and perhaps some supplementary information sheets that go with it.

The CHAIRMAN. They have offices in Boston, Baltimore, and Philadelphia according to your report on page 44.

Mr. SKOLNIK. That is correct.

The CHAIRMAN. Would that imply that they use, in addition to wire services, the U.S. mail?

Mr. SKOLNIK. I believe they do in distributing some of these information sheets.

Mr. PEET. Mr. Skolnik, are you familiar with the proposal embodied in H.R. 6909, title 1, which relates to the creation of an Office on Syndicated Crime?

Mr. SKOLNIK. To create an Office on Syndicated Crime?

Mr. PEET. Yes.

Mr. SKOLNIK. I don't think that was one of the bills that was forwarded to our office.

Mr. PEET. That Office would assemble, correlate, and evaluate intelligence, relating to the operations and activities of syndicated criminal elements in this country, within the Department of Justice, under the control of the Attorney General, and make it available, at the Attorney General's discretion, to the police forces throughout the country, both Federal and State.

Do you believe such a unit would be helpful in getting at syndicated criminal activities, including those gambling activities with which we are concerned particularly?

Mr. SKOLNIK. On the basis of our experience in New York State, I would say yes. As a matter of fact, we have been advocating in our own area—New York—a coordination and assembling of such intelligence information from the local areas, the local law enforcement officers, to a higher level in New York State, where all this could be gotten together, studied, analyzed, and acted upon. We thought that would be very effective.

I might tell you gentlemen what we have been doing recently in going out into the field. We have been holding regional conferences with local law enforcement officers. For example, on next Wednesday our commission will be up in Rochester, N.Y., where we will meet with the district attorneys, sheriffs, and police chiefs of the entire area.

One of the things that we have been doing is to urge the creation of such a centralized office which could gather together all this intelligence information and use it to the best avail.

We find that bits of information kept in the drawers and lockers in different communities, in themselves may amount to very little. But put together, this information certainly helps to get to the crux of a problem and also good law enforcement.

The CHAIRMAN. I think we will have to terminate your testimony shortly, Mr. Skolnik. The President is going to address a joint session shortly. Meanwhile convey our compliments to the members of the commission of the State of New York and indicate to them as far as the chairman is concerned, we feel you are doing an excellent job.

Mr. SKOLNIK. We thank you very much for those gracious remarks. I am sure that every member of our staff will be very happy to hear it. I shall be happy to remain until after the session should anyone wish to talk to me, or to get further information.

Mr. CRAMER. I was very interested in your statement, and I concur with it on your last page, that positive steps will be taken in every direction with every legal means and device.

You mention specifically the need for taking away, or restricting, the use of telephones. The bill introduced by the distinguished chairman,

of course, recommended by the present Attorney General, makes it illegal to use the telephone for that purpose, or to permit it to be used.

Other bills that have been proposed by the previous Attorney General and contained in 6909 as well go a step further and make it possible for the phone companies, on request of local officials, to withdraw the services.

Don't you think that is an essential element? The telephone companies today, if they withdraw services or discontinue them, do it at their own peril. This would permit them to do so by statute on request of local law enforcement officials.

Mr. SKOLNIK. We have found from our experience that these telephone companies refuse to take any action after we have disclosed one of their subscribers to be a bookie. I think that would be quite helpful.

Mr. CRAMER. Isn't it because, under present circumstances, they are reluctant to do it in that they do so at their own peril and are even subject to suit if they improperly withdraw the service?

Mr. SKOLNIK. It would appear to be so. That is the explanation they certainly do give.

Mr. CRAMER. Likewise, on the other side of the coin, wouldn't it be helpful if the employees of their own company who have reason to believe the facilities are used for gambling purposes would have the responsibility, as contained in 6909, to report to the law enforcement officials those facts?

Mr. SKOLNIK. That was brought out very thoroughly by the chairman.

The CHAIRMAN. Thank you very much, Mr. Skolnik.

STATE OF NEW YORK,  
COMMISSION OF INVESTIGATION,  
New York, N.Y., July 10, 1961.

HON. WILLIAM R. FOLEY,  
General Counsel, House Judiciary Committee,  
House Office Building, Washington, D.C.

DEAR MR. FOLEY: When Deputy Commissioner Nathan Skolnik appeared before Subcommittee No. 5 of the House Judiciary Committee on May 25, 1961, Congressman Emanuel Celler requested that we forward to you comments regarding constitutional questions which may arise in the enforcement of certain antiracketeering bills under committee consideration.

The bills which prohibit the interstate shipment of gambling materials and paraphernalia should not create any constitutional question. The right of the Congress of the United States to regulate interstate commerce provides ample basis for such legislation. In the case of *Ames v. Champion*, 188 U.S. 321 (1923) the Supreme Court of the United States upheld the constitutionality of legislation forbidding interstate traffic in lottery tickets.

Since that time, legislation which repressed interstate transportation of liquor, illegally taken game and wildlife, convict-made goods, stolen motor vehicles and other property, kidnap victims and females held in the white slavery has also been deemed a proper exercise of congressional power.

Those bills which would bar the transmission of gambling information via interstate communication facilities do not appear to violate constitutional guarantees of free speech as they flow from the right of the Congress to exercise its powers for the general public welfare. Furthermore, it is doubtful whether information which may be clearly defined as gambling results is, in fact, "speech" as contemplated by the first amendment of the Constitution of the United States.

H.R. 3022 may give rise to constitutional objections in the events of its enactment together with bills prohibiting the interstate transmission of gambling information. The net effect of this combination would require individuals to file affidavits with the Justice Department admitting conduct under one law which is made criminal under another. Such requirement might well con-

travene the clause of the fifth amendment of the U.S. Constitution which prohibits compulsory self-incrimination. This precise issue was raised in the recent case of *Communist Party v. Subversive Activities Control Board*, No. 12 (decided June 5, 1961), 29 U.S.L.W. 4623. Since this case was decided on different grounds, the question must be considered unsettled.

In addition, H.R. 3022 would punish persons who submit "false and misleading affidavits." The word "misleading" may be so vague and subjective as to raise doubts of its constitutionality in a criminal statute.

We would like to take this opportunity to make some comments on other bills. H.R. 6573 does not clearly differentiate between the transmission of legitimate sporting news for general public consumption and the transmission of sports results chiefly for gambling purposes. A very careful reanalysis of the language seems desirable.

H.R. 1246 which provides for the granting of immunity by Federal authorities presents a practical problem in the effective enforcement of antiracketeering laws. A recent Supreme Court decision, *Reina v. United States*, 364 U.S. 507 (1960) held that a grant of immunity by a Federal grand jury extends protection from both Federal and State prosecution.

It is with this case in mind that we note that no provision is made in the bill for notice to and advice from State officials who, on the basis of knowledge and experience, may in many cases be most qualified to assess the benefits or disadvantages in granting immunity to witnesses with criminal records and backgrounds. Further, great harm could result from an inadvertent Federal grant of immunity to a criminal against whom State authorities may be conducting investigation and prosecution. We therefore consider it essential that the statute afford interested State officials the right to be heard with respect to the granting of immunity. (See sec. 2447, subd. 3(d) of the penal law of the State of New York.)

In closing, may we thank the committee for inviting us to appear and for affording us the opportunity to make these further comments on proposed legislation which in total effect should be of great value in combating the forces of organized crime.

Very truly yours,

GOODMAN A. SARACHAN, *Chairman*.

The CHAIRMAN. Our next and final witness this morning will be Mr. James DeWeese, national vice president of the National Association of District Attorneys. Mr. DeWeese, we are a little pressed for time because we are due in the Chamber a little before 12 o'clock.

#### STATEMENT OF JAMES H. DeWEESE, EXECUTIVE VICE PRESIDENT, NATIONAL DISTRICT ATTORNEYS ASSOCIATION

Mr. DeWEESE. Mr. Chairman, I am delighted to be here. I am sure it won't take much time to say what I have to say.

Mr. McCulloch called me the other day and said he understood that several of the officers in the National District Attorneys Association were going to be here to appear before this committee, and he thought I might like to sit in as a spectator.

The CHAIRMAN. Where do you operate?

Mr. DeWEESE. I am the prosecuting attorney of Miami County, Ohio. Troy is the county seat, but I live in Piqua, Mr. McCulloch's home.

The CHAIRMAN. You are especially welcome here because you are a very close friend of our very distinguished colleague and a neighbor of our distinguished colleague, Mr. McCulloch.

Mr. DeWEESE. Thank you. I find myself here by myself today. Patrick Brennan was supposed to be here, and Mr. Ed Silver is not here. What I have to say is off the cuff and based on some notes which Mr. Silver forwarded down here and which arrived this morning.

I might say that in our small county, of course, we don't run across nationally organized crime to a large extent. But I do know from my

activities with the National District Attorneys Association over the past 8 years that the prosecuting attorneys and district attorneys and county attorneys in larger counties are very much concerned about their inability to cope with nationally organized crime organizations.

Referring to Mr. Silver's notes which he forwarded to me—having made some summary of these bills—referring to House bills 468 and 3023, his interpretation of these bills is that these are good. Both of them are substantially the same. They refer to, of course, the fact that the local authorities would get the FBI and other national organizations to help them in apprehending criminals who have committed crime or who have escaped from confinement.

At the present time we are limited to those eight crimes which I believe spell out the words "Ma Barker." You probably are all familiar with those. This would help us to a large extent.

I believe our association within the past year adopted a resolution approving such a law.

House bill 1246, which is a bill to grant immunity from prosecution, has been approved by our national association. Mr. Silver's personal comment on this bill is that it is a good act.

House bill 3021, which is very similar to the previous bill, is also approved by our association, and we think it would be very helpful in combating crime.

House bill 3022, which is a bill to amend title 18 of the code to assist in the prevention of interstate transmission of gambling information—Mr. Silver has a note here that he has some doubt about the constitutionality of the bill regarding the possible forcing of a person to testify against himself.

He refers to the other bill, 6572. However, my own thought on that would be that the constitutionality of this bill might be based on the same ground as the constitutionality of the laws which require affidavits as to connection with certain communistic organizations or other unfavorable organizations, which in many instances have been upheld.

On House bill 3246, which is substantially the same as 6571, the administration bill, the difference being that in 3246 the word "knowingly" is omitted: Mr. Silver's comment on that is that he thinks the omission of the word "knowingly" may create a serious constitutional question.

House bill 6571 concerns itself with the interstate transportation of wagering paraphernalia. This is one which the National District Attorneys' Association has been concerned with for several years.

Mr. Silver has this marked as "OK" and I am sure that our association would be heartily in favor of it.

With regard to House bill 5230, I think that this is a good bill, although Mr. Silver thinks it should require further study and consideration for the possibility that the Federal Government may become too active in State problems. However, I think that we must all realize that when we are dealing with crime today, we are talking about something that goes beyond the borders of each State.

H.R. 6572 prohibits travel in aid of racketeering enterprises. Mr. Silver suggests that this also requires more study, though it is not as broad as H.R. 5230.

I read some statements, which I believe Mr. McCulloch furnished. I read them rather hurriedly. It seemed to me somebody in discussing this bill indicated that one objection was that the manufacturer would have to become familiar with the laws of each State and have to know what the laws were.

I don't think that is too uncommon. I think any manufacturer who does business in more than one State must necessarily familiarize himself with the laws of each State. Certainly motor vehicle producers, and I know that motion picture producing companies and so on must know in advance the laws of each State before they even start making a picture or producing a car. I think it is not too much to expect someone who is making a product which he expects to transport in interstate commerce to know the laws of the State in which he intends to do business.

Bill 6573 is recommended by our association. We feel that it takes a necessary tool away from the gambler, particularly the racket gambler. I believe also in this connection I read in one of the statements an objection to this bill for the reason that it might require special training of employees to determine whether or not the communication facilities were being used in violation of it.

My only comment on that would be that I think anyone who is competent enough to be an employee of a communication company certainly would be able to recognize an illegal operation such as is envisioned by this act. It wouldn't take any special training for an employee or anyone else to walk into an operation and know that it was being used illegally.

Mr. HOLTZMAN (presiding). You don't feel, then, it would be unfair or unkind to the phone company, I take it, if the employees as well as the officers had an obligation to report it when they had reason to believe that phones were being used illegally?

Mr. DEWEESE. I don't think it would be unfair, no, sir. I think they would be rendering a public duty, a public service. Of course I think that, as has been mentioned in some of the previous statements that I had a chance to look over, there should be some immunity to the telephone company if it operates in good faith which would preclude them from liability in a civil action, particularly in cases where they are advised by law enforcement officials that such an operation is going on.

It certainly shouldn't take days or weeks to investigate to determine whether or not it is being so used, and by that time the thing is over with and the people are gone to some other State or community.

This covers Mr. Silver's statement. As I started out and expressed to you, in my small county of 72,000 or 73,000 people we don't get national crime. However, I would like to point out that within the last 2 years we have had one burglary in our county in which it developed that the two men involved were members of gangs, you might say, working out of Youngstown and Cleveland, which are some 200 miles from our county.

We had another burglary in which our investigation before trial at the time of arrest took us to Newport, Ky., where we found that these two men were connected down there; and in fact one of them filed an alibi indicating that he was going to claim he was in a gambling establishment in Newport at the time of the burglary.

We also had another burglary in which the defendants were involved with Newport connections, and the setup of that burglary was that they drove to Columbus, Ohio. The fellow who owned the car stayed in a hotel room in Columbus. The other two fellows came to our county and attempted to knock off a storage warehouse there.

So you see we are not too far removed from these outside influences, even in a small county. I know from talking to fellows like Bill McKesson in Los Angeles and Ed Silver in Brooklyn and Dick Gerstein in Miami and Dan Ward up in Chicago that this is a major problem with law enforcement, and particularly prosecuting attorneys, to get to the meat or the core of crime which has its effect in those cities, but which is controlled from outside the city and even from outside the State.

I hope I haven't taken too much of your time. I am sure that I must apologize for not being any more prepared than I am today.

Mr. PEET. Are you familiar with the proposal embodied in H.R. 6909?

Mr. DEWEESE. Not by number. Maybe if you mentioned it—

Mr. PEET. It calls for the creation of an Office on Syndicated Crime.

Mr. DEWEESE. You mean the Crime Commission?

Mr. PEET. It is similar to that proposal, a national crime intelligence unit.

Mr. DEWEESE. I think that there is such a bill; I have read about it. But to speak with authority on it—if you have some particular question, I might be able to answer it.

Mr. PEET. Do you believe a national crime intelligence unit, located in the Department of Justice, whose function is to assemble, correlate, and evaluate intelligence information relating to organized crime would be a valuable tool in combating syndicated criminal activities?

Mr. DEWEESE. I certainly think it would be. I would see no objection to it. I can't at the moment think of anything objectionable to it. I know that at the present time in our State there is some talk about organizing a State police force. I know there is some objection because they think they will be taking over what the counties and local police have been doing.

I am personally not too afraid of that.

Mr. CRAMER. Mr. Chairman, I understand that 6909 is before the subcommittee. I would like to ask that he be permitted to express his opinion in regard to the titles in that bill as well.

Mr. HOLTZMAN. That will be perfectly all right if the witness cares to comment on it, or even submit a statement in support for or against 6909 for the record. He may do that now or in any fashion that he sees fit. We will be very happy to accommodate our distinguished friend from Florida.

Mr. DEWEESE. This is on H.R. 6909? That is the one you spoke of?

Mr. PEET. That's right.

Mr. DEWEESE. Is there another bill then on the crime commission?

Mr. CRAMER. It is an omnibus bill and is called the Antiracketeering Act of 1961, and includes, as title 1, the proposal for the establishment of an Office on Syndicated Crime under the jurisdiction of the Attorney General.

Mr. DEWEESE. Yes. That is this bill here?

Mr. CRAMER. Yes.

Mr. DEWEESE. Wasn't there also another bill along the same lines?

Mr. CRAMER. I have no knowledge of it. It also clarifies some of the questions you raised on some of the other bills, including "knowingly" with regard to paraphernalia in interstate commerce.

Mr. HOLTZMAN. I want to say to the witness that, in spite of his alleged unpreparedness here, he made a very creditable showing and a very fine statement here.

I am sure at this point it would not be unkind if I yielded to our distinguished ranking minority member, who would like to say something.

Mr. McCULLOCH. Thank you, Mr. Chairman. I am sorry that I was out of the hearing room for a moment, having been called back to my office, when the witness was called.

I have known James H. DeWeese, the executive vice president of the National District Attorneys Association, for many, many years. He has been prosecuting attorney of Miami County, Ohio, one of the great counties in a great State, I think perhaps longer than anyone in the history of the county.

He has the respect—yes, the admiration—of distinguished members of both parties. I am very happy that he is here this morning. I am sorry that he was notified at such a late hour that he was to be the witness for the national association. But I am sure that, with the additional information he will furnish us, his contribution will be a significant one.

Jimmy, I am glad you are here with us.

Mr. DEWEESE. Thank you, Mr. McCulloch.

Mr. HOLTZMAN. The committee will now recess until 10 o'clock tomorrow morning.

(Thereupon, at 11:35 a.m., the committee recessed, to Friday, May 26, 1961, at 10 a.m.)

## LEGISLATION RELATING TO ORGANIZED CRIME

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FRIDAY, MAY 26, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 5 OF THE  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 10 a.m., in room 346, Old House Office Building, the Honorable Emanuel Celler (chairman of the subcommittee) presiding.

Members present: Representatives Celler, Holtzman, Toll, and McCulloch.

Also present: Representative William C. Cramer; William R. Foley, general counsel; Richard C. Peet and William H. Crabtree, associate counsel.

The CHAIRMAN. The committee will come to order. Our first witness this morning is Mr. Dan F. Hazen, assistant vice president of Western Union Telegraph Co.

**STATEMENT OF DAN F. HAZEN, ASSISTANT VICE PRESIDENT, THE WESTERN UNION TELEGRAPH CO.; ACCOMPANIED BY PETER F. OATES, ASSISTANT GENERAL ATTORNEY, THE WESTERN UNION TELEGRAPH CO.**

Mr. HAZEN. Mr. Chairman, I am Dan F. Hazen, assistant vice president of the Western Union Telegraph Co. I reside in Ridgewood, N.J., and perform my duties in our headquarters building at 60 Hudson Street, New York City.

As counsel, I have with me on my right, Mr. Peter F. Oates, assistant general attorney for Western Union. He resides in Valley Stream, Long Island, and also performs his duties at 60 Hudson Street.

The CHAIRMAN. What is the name of your counsel?

Mr. HAZEN. Mr. Peter F. Oates.

The CHAIRMAN. Where is he stationed?

Mr. HAZEN. He also is at 60 Hudson Street in our headquarters office, sir.

I wish, with your permission, to make one brief comment before reading my formal statement to this effect, that I am not appearing here today with any intent of minimizing or denying the fact that there is a problem in the use of wire communications—all communications—for illegal purposes.

In my formal statement I wish to present our company's position and give a brief comment on the proposed legislation. We are appreciative of the opportunity to participate in a discussion toward correcting this problem which we realize we have.

The CHAIRMAN. You feel the problem must be corrected?

Mr. HAZEN. Yes, sir; and we recognize the problem.

The CHAIRMAN. I take it that the Western Union Co. wants to cooperate with the Congress in that regard?

Mr. HAZEN. Indeed, sir. My duties are to assist the vice president in charge of operations in the various operating matters of the company, including field operations. As the members of this subcommittee are aware, Western Union is a common carrier engaged in rendering interstate and foreign wire and radio communication services subject to the provisions of the Communications Act of 1934, as amended.

Under the provisions of that act Western Union must furnish its regulated communication services to the general public without unjust or unreasonable discrimination, preference, or advantage and subject to rates, rules, regulations, and practices embodied in tariffs on file with the Federal Communications Commission.

The act provides that a carrier violating its provisions shall be liable to the person injured by the violation for the full amount of damages sustained thereby, plus attorney's fees and prescribes criminal penalties for willful violation thereof.

Section 605 of the act, the so-called wiretapping provision, in addition to prohibiting unauthorized interception of communications, also makes it unlawful for an employee of the carrier to "divulge or publish the existence, contents, substance, purport, effect, or meaning" of a communication.

For purposes of this discussion, the communication services of Western Union most likely to be affected by the enactment of a bill such as H.R. 7039 may be broken down into the following general groups:

(a) "Public message service": This classification covers the handling of messages, money orders, and other intelligence received at a Western Union office or agency from a member of the public for telegraphic transmission and delivery to an addressee designated by the sender.

(b) "Leased facility service": This classification embraces the furnishing of facilities by Western Union to a customer for use by the customer and persons authorized by the customer in sending his and their own communications to and from each other.

(c) "Baseball-sports ticker service": Under this service Western Union disseminates to the subscriber over communication circuits connected to a ticker installed on the subscriber's premises information collected by Western Union relating to baseball, football, basketball, hockey, and other sporting events of general interest, excluding horse and dog racing, except to the extent that the results of the Kentucky Derby and possibly of a few other races of nationwide interest are furnished. (The dissemination of information on these races could readily be eliminated without affecting the demand for the service.) In this service betting odds and names of probable starting pitchers in baseball games are not transmitted.

Insofar as the service furnished under (b) and (c) above are concerned, a basic objection of Western Union to the enactment of H.R. 7039 stems from the failure to include therein a provision such as that found in section 5(2) of the model antigambling act drafted by the American Bar Association Commission on Organized Crime and ap-

proved by both the bar association and the National Conference of Commissioners on Uniform State Laws. That provision reads:

When any public utility is notified in writing by a law enforcement agency acting within its jurisdiction that any service, facility, or equipment furnished by it is being used or will be used to violate this section, it shall disconnect or refuse the furnishing of such service, facility or equipment, and no damages, penalty or forfeiture, civil or criminal, shall be found against any public utility for any act done in compliance with any such notice. Unreasonable failure to comply with such notice shall be prima facie evidence of knowledge against such public utility. Nothing in this subsection shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, that such service, facility, or equipment should not be discontinued or removed, or should be restored.

The CHAIRMAN. Let us pause there, after that suggestion by the American Bar Association. That doesn't place any responsibility, for example, on your company, except to discontinue the service when you are notified in writing by some law enforcement agency that the service is being misused.

It doesn't involve any responsibility on your part to tell voluntarily the peace officers that your service may be improperly used. Do you follow me?

Mr. HAZEN. Yes, sir; I follow you. Our practice, and our policy and belief in this connection, is that we do have an obligation to provide knowledge of the existence of installations of any service that can be used for illegal purposes, and we so do.

We feel that our responsibility is to make this information available to the law enforcement authorities. They in turn should make the determination, the police determination, as to its use and then notify us and we would act accordingly.

The CHAIRMAN. Suppose you have the knowledge that your service is being improperly used and you refrain from making disclosure. What then?

Mr. HAZEN. Sir, in cases where we have knowledge of such installations, we refuse the installation or we remove the installation under our tariff provisions, which, of course, now provide that the services are not to be used for illegal purposes.

I refer to knowledge in this sense as evidence; certainty that they are being used improperly. We do not feel, however, that we should make this determination. If such knowledge comes to us, we act.

The CHAIRMAN. And that's all. You don't feel that you should be obligated to disclose voluntarily these improper uses of your services to police officers or enforcement officers?

Mr. HAZEN. Yes, sir; we do make available this information to them. We feel we should, and we do.

The CHAIRMAN. But should not the statute provide that it shall be your duty to do so, and that, if you do not do so, sanction shall be visited upon you?

Mr. OATES. Mr. Chairman, may I comment at this point?

The CHAIRMAN. Forgive me for interrupting. I don't mean to single out Western Union at all. I am speaking generally.

Mr. HAZEN. We understand, sir. This is a good point.

The CHAIRMAN. If we don't provide for sanctions, then the mere declaration that it might be well for the Western Union Co. or a similar company to make the disclosure doesn't get us anywhere. Unless

we put some teeth in the statute, experience over the years indicates that the statute becomes a dead letter.

Mr. OATES. Mr. Chairman, in connection with that, our main problem seems to be to get someone to whom we can give the information.

The CHAIRMAN. Can't you give it to the district attorneys or the captain of a police station in New York City, or somewhere else?

Mr. OATES. We do that, sir.

The CHAIRMAN. That should be sufficient.

Mr. OATES. It isn't, sir.

The CHAIRMAN. Why?

Mr. OATES. I believe the members of this committee are familiar with what happened up in Rochester. We put sports tickers in establishments up there, bars and grills, tobacco houses—seven or eight or nine of them. We cleared every one of those with the police before we put them in.

But I think the investigation conducted by the New York Commission on Investigations—

The CHAIRMAN. The crime commission.

Mr. OATES (continuing). Discloses the police were not doing their job.

The CHAIRMAN. The police have not been doing their job?

Mr. OATES. That is our impression.

The CHAIRMAN. Have they fallen down after you have given them information?

Mr. OATES. Yes, sir.

Mr. HAZEN. Our policy, sir, has been to notify the local law enforcement officials, chief of police, of the service and the fact that our records were open and available to them.

The CHAIRMAN. The mere fact that the police have been derelict in the way you indicate is no reason for our not putting something in the statute requiring you to make a disclosure; and if you do not, then you shall suffer some penalties. If the police do not follow this up, that is not your fault.

You are discharging your obligations when you in good faith make your report to the police officers.

Mr. HAZEN. We agree with this view, sir, and that is why we do make it known to them.

The CHAIRMAN. Why should you object to something like putting sanctions into the statute if you do exactly that?

Mr. OATES. We feel that there is no need for it. When there is evidence that the common carriers—any common carrier—refuses to cooperate and give this information, then we think it is time to consider imposing penalties.

The CHAIRMAN. We, for example, have in evidence here rather unusual cases of where common carriers have had their wires and their services used and nothing has been done. Again I believe Western Union will undoubtedly respond and make these disclosures. But Western Union is not the only public service corporation in this country handling communications. We have many others.

It strikes me that there would be no hardship on Western Union if we provide something in the nature of what I have indicated in the statute. All Western Union needs to do is to continue doing what it is doing now—make the disclosure. If it is not acted upon, that is not your fault.

Mr. OATES. You are speaking of title 4 of H.R. 6909?

The CHAIRMAN. We are talking about H.R. 7039.

Mr. OATES. In H.R. 7039 we don't see any provision requiring us to report.

The CHAIRMAN. It may be that H.R. 7039 is not a final draft. We are trying to obtain evidence so we can fashion a bill that—

Mr. OATES. Title 4 is what you have in mind, I assume. That requires a carrier who has reason to believe or an employee who has reason to believe to notify the authorities.

We sincerely believe that a penal provision of this kind will be strongly resented by our employees. We are of that opinion. We think that we can get more cooperation from them by simply requesting that they give the information.

I am not by any means an expert on criminal law. I know very little about it. But offhand I do not know of any similar statute in the entire field of criminal law that compels a person who has mere suspicion as distinguished from knowledge to report. If I am correct in that impression, it seems to me the common carrier employees are being singled out.

If a provision of that kind is desired, our thought would be that it should apply to the entire public and to all crimes, if a person is required—under pain of a fine and imprisonment—to report suspicion as distinguished from knowledge or facts showing knowledge. I don't know of any similar provision in any other criminal statute.

The CHAIRMAN. It is not the purpose to have Western Union become a carrier of tales, to report to the police flimsy statements, whether or not based upon facts. It is only in cases where you have something more than mere suspicion.

The gentleman from Ohio prompts me: Where you have reason to believe there is a violation, you should have some sort of an obligation to report that. You have the means of detecting these things. The messages come under the eyes of your employees. Circumstances may cluster around those messages which arouse your suspicion, and then you should be under some obligation to make a further examination and then report.

I don't mean that you should become an enforcement officer, but I think you have something in the nature of an obligation. Or it may be that you can't find any similar statutes. It is also true that organized, national crime has taken such forms as to require new methods of combating it.

We have to plow out new fields here. We may have to do something that is novel, of course within the Constitution. We don't want to hurt Western Union. We don't want to do anything that would be harmful to its operations. That is furthest from our viewpoint.

But I don't think you should take a negative attitude and simply say you want to cooperate. That means doing exactly what you have been doing all along. You have been cooperating. I don't think that is enough.

Mr. OATES. We have expressed the view that our employees will sharply resent it. That is a sincere belief on my part and on the part of others in Western Union. There are hundreds of thousands of employees of these carriers who are going to resent this.

We think if any of these bills are enacted giving the Federal Bureau of Investigation jurisdiction that they will have the wholehearted cooperation of all carriers.

The CHAIRMAN. I don't think any member of the committee has any doubt on that at all. I think you will cooperate. I think we have to put something into the statute that will force cooperation in the event that some company, at some future time, doesn't continue the cooperation.

Mr. OATES. Sir, if that is your view, we have simply expressed our opinion.

The CHAIRMAN. That is not my view. I don't want you to feel that way. It is a give-and-take here this morning, as it is throughout the hearings.

Mr. HAZEN. We do have some other suggestions, sir, as we go along that perhaps you would like to consider when we get to them, which perhaps offer aid in solving the problem.

Mr. McCULLOCH. Mr. Chairman, I would like to make a comment or two, in view of the testimony that we have just had. Of course we all recognize that the situation is undesirable. Employees may resent a certain policy or a certain requirement. The mere fact that they resent it should not be a controlling factor in any decision we reach.

There is some evidence that some employees of the electric companies in the recent price-fixing cases resented the policies that apparently had been handed down by the chief executive officers of their several companies—but the employees were indicted and pleaded guilty to the indictments. The public good that comes from a course of action laid down by the Congress justified that action.

Again we can refer to the observation of old: "New occasions require new remedies," and although there are old precedents sometimes, and irritating precedents, new remedies may be necessary.

We must have positive cooperation if the enemy continues to gain strength and it may become necessary, therefore, to make it mandatory that information be furnished.

Mr. OATES. We recognize that, sir. We merely expressed our view that we think so far as Western Union is concerned, the Federal Bureau of Investigation would get anything it wanted that we could legally disclose.

In connection with that last part of my statement, I would also like to point out that there might be an inconsistency between that provision and section 605 of the Communications Act.

The CHAIRMAN. We will have to reconcile whatever you do with the Communications Act. But to get back to your statement of what you call the novelty of this if we provide for sanctions, we do not wish to point the finger of guilt at Western Union needlessly. It is well to remember under New York State law—if I remember correctly—under certain circumstances a doctor must report certain findings to the police officers. For example, if somebody is wounded with a gunshot wound, the doctor must disclose the nature of that wound and the circumstances to the police.

In a matter of abortion, he is under obligation—under severe penalties otherwise—to make disclosure to the police. I think in the case of pawnbrokers, if they have goods submitted which are pledged to them and they have reason to believe the goods have been stolen, they are under obligation to report the same to the police.

In the case of a licensed junk dealer, if he has reason to believe that the goods are stolen and they are offered to him, he must report that to the police. I think there are quite a number of cases under the New York statutes which put that obligation upon the citizens.

Mr. OATES. In the language "reason to believe"?

The CHAIRMAN. I haven't got it before me. I am speaking generally about an obligation to disclose to the police information that might lead to the running down of some culprit who has committed some wrong.

Mr. OATES. If that is correct, then I simply stand corrected on my impression.

The CHAIRMAN. Maybe I am wrong. Your view may be right, but I don't think so—if I remember my New York State law correctly.

Mr. HAZEN. Our feeling, sir—just one further comment on that particular provision. We simply again point out that we don't feel that it is necessary to have the penalty provision against employees for failure to disclose "reason to believe." We think that there are other means of solving this problem which we would like to suggest consideration of.

The CHAIRMAN. Suppose you continue with your statement.

Mr. HAZEN. Western Union—and we are reasonably certain this applies to the other communication carriers—is fully aware of its obligation to cooperate with law enforcement authorities in seeing to it that its services are not put to illegal use. However, as we have stated on many occasions in the past, the blunt fact remains that the telegraph company is trying to run a telegraph business and makes no pretense at being a detective agency.

Surely, the members of this subcommittee are aware of the problems faced in establishing the existence of illegal gambling and the difficulties usually encountered in obtaining competent proof of such gambling. The existence of circumstances reasonably calculated to give rise to suspicion, even strong suspicion, that the gambling laws are being violated obviously is not enough to support a conviction. Competent evidence of the violation must be produced.

Unlike law enforcement agencies, the telegraph company has no subpoena powers and no authority to conduct raids on suspect premises for the purpose of gathering evidence.

Under section 605 of the Communications Act it is prohibited from "monitoring" its leased facility services for such purpose. The telegraph company does not have and should not be expected to have personnel trained in police investigative methods and techniques. Its installation and repairmen who normally enter the premises of subscribers to the leased facility and baseball sports ticker services are trained only as mechanics and not as policemen.

Under any realistic appraisal of the situation, the initial determination as to whether the gambling laws are being violated in a particular instance should, we think, be made by the law enforcement agencies having jurisdiction, particularly under circumstances where the carrier has notified such agencies that the carrier's records containing information which may legally be disclosed with respect to the use of the carrier's services are maintained locally and open for inspection.

I should also like to remind the members of this subcommittee that there is a vast distinction between possession of knowledge of a

violation of a criminal statute and possession of legally competent admissible evidence of such violation. Obviously knowledge of the existence of facts and circumstances may be acquired in many ways and by various means and methods and yet the person in possession of such knowledge may not be able to produce proof of such facts and circumstances acceptable in a court of law. Thus the carrier with knowledge but without competent admissible evidence of illegal use of its services finds itself in a rather difficult position—it must choose between (a) refusing to discontinue the service and subjecting itself to the criminal liability and (b) discontinuing the service and incurring civil liability under section 206 of the Communications Act.

The CHAIRMAN. We wouldn't want you to go that far, that you establish a case with competent evidence that would not break down. We don't ask you to give us competent evidence to secure a conviction. That wouldn't be asked of you.

Mr. CRAMER. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. CRAMER. Don't you have the same provisions in your tariff as do the telephone companies with regard to, in the first instance, not providing services to those who are using them for illegal purposes?

Mr. HAZEN. Our tariffs provide, sir, that the services are not to be used for illegal purposes; yes. In general that language applies to all of those services we are talking about.

Mr. CRAMER. And you can discontinue those services, at your own peril, on the same basis. Right?

Mr. HAZEN. Our practice has been to discontinue this service when we have knowledge—direct, positive evidence—that they are being used illegally.

Mr. CRAMER. "When you have reason to believe." Isn't that the specific provision?

Mr. HAZEN. No, sir; it is not. That has not been our practice. Perhaps this is one of the problem areas. Our practice has been to install leased equipment, sports tickers, if you will, on order, notifying the proper authorities that our records were available and depending on the law enforcement people to determine the illegal or legal use of these.

If we have knowledge that this is to be put to an illegal use or we find that it is, we remove the service. We discontinue it.

Mr. CRAMER. What is the difference between that test, which you now acknowledge, and the test proposed in the requirement for employees to advise the law enforcement authorities?

Mr. HAZEN. Well, sir, I am an electrical engineer. The last 24 hours I wished I could become a lawyer for a couple of days, but that didn't work.

Mr. CRAMER. The only requirement intended to be proposed in H.R. 6909 is the same test that is now employed, that is, the actual knowledge which you have—reporting that to the law enforcement authorities.

Mr. HAZEN. Our feeling is this, that an employee is placed in a shadow area unless he actually sees a bet, for instance, being made on the premises. He doesn't have proof acceptable in a court if he just sees the installation of the ticker, for instance, and a blackboard.

Mr. CRAMER. When the telephone people testified, it was made clear by this committee that certainly it was not the intention in drafting 6909 that the telephone or telegraph companies become investigative agencies. But if they should, in the course of business, come across circumstances which gives the employee reason to believe that facilities are being used for illegal or gambling purposes limited to syndicated gambling operation, they should notify the police.

Mr. OATES. May I comment on that, sir? We think the carriers' employees do have an obligation to convey that information—

Mr. CRAMER. What is the objection to giving it legislative stature?

Mr. OATES. We have already given our opinion that we think more good would be accomplished by leaving it on a voluntary basis. As a matter of fact, several years ago when we initiated a policy of requiring our union people to report, there was resentment—in fact, the words "stool pigeon" were used. "What do you think we are—stool pigeons?"

We have corrected that view now. But again I think if it is made mandatory, there will be resentment.

Mr. McCulloch stated that resentment on the part of the employees should not be the primary consideration. We agree with that. We think it is a matter for the legislators to decide. We have merely voiced our opinion that there will be resentment. We are, of course, not certain that it will lead to less cooperation.

Mr. CRAMER. Would you have any objection, as the American Bar Association suggested, to having a duty to cut off the services when requested by local law enforcement authorities, with a proviso that you are not subject to damages?

Mr. HAZEN. This is what we propose, sir.

Mr. OATES. This is what we have been asking for.

Mr. CRAMER. You are willing to agree to that, but you are not willing to agree to the other side of the coin that the employee should inform when he has information?

Mr. OATES. Sir, it isn't a question of our not agreeing to it. We have merely voiced an opinion that it would create resentment.

The CHAIRMAN. Your position is that you do inform, you do cooperate?

Mr. OATES. That is correct.

The CHAIRMAN. But you don't want a statute to provide that you must cooperate and, failing to do so, you would incur penalties? That is your position?

Mr. OATES. That is right, sir.

Mr. McCulloch. Mr. Chairman, in that regard, then, I take it that this paragraph from the McFarland report of 1950 which I read yesterday, and which I will read again so that I will not be talking about something you do not know about, no longer prevails.

Yesterday, I read a paragraph from Senator McFarland's report in 1950, Senate Report No. 1752. The last two sentences of that report, which are a part of the record now, are as follows:

The evidence, however, discloses no serious affirmative efforts by the telephone companies to divorce themselves from this business, either on a local or interstate basis. As to Western Union, that company makes no secret of the fact that, so long as it remains a legal business, they intend to supply the facilities to carry it out.

My question is this: The position of your company is no longer accurately represented by that statement, if I understand what you have said this morning.

Mr. OATES. If I understood that correctly, Mr. McCulloch, that still represents our position. If it is a legal business, we feel we don't have any choice. We must render the service.

Mr. McCULLOCH. And you intend to supply no information to law enforcement officers to aid in suppressing these illegal activities.

Mr. OATES. We intend to supply everything within our knowledge.

Mr. CRAMER. Does that mean, as you have expressed it here, "only legally competent, admissible evidence of a violation"?

Mr. OATES. No, sir, it means anything. We will make our employees available for questioning by the Federal Bureau of Investigation.

The CHAIRMAN. That isn't enough. That means somebody must initiate something. The law enforcement agency must initiate the proceeding before they would reach the point where they would interrogate your employees.

The point is: Will you voluntarily disclose information that is suspicious?

Mr. OATES. Mr. Chairman, we have two situations where this will come into play: Our sports ticker service and our leased facility to some extent. On the sports ticker services we have lists, names and addresses and the nature of the business. They are available at every local office, for examination by any law enforcement officer. We will compile a list at headquarters, if desired, and submit it to the Federal Bureau of Investigation.

The list will show who is using the sports ticker and the nature of their business.

On the leased facility—that is, facilities leased to the patron who sends his own information—we have rather carefully checked every leased facility we have. We think they are all legitimate.

The CHAIRMAN. You think they are all legitimate?

Mr. OATES. Yes, Mr. Chairman. We do have several disseminators of racing information. We have a list with every drop on that list. We will gladly furnish that to the Federal Bureau of Investigation and we will make the employees who go into these premises available for questioning.

We are willing to keep these lists and submit them to any and all law enforcement agencies.

The CHAIRMAN. That means, from what you express now, that somebody else must start the proceedings and then go into questioning your employees or examining your apparatuses. We are asking you to go beyond that. If you have any reason to believe your apparatuses are being used improperly, you should voluntarily go forward to the police officers and make disclosures. It may be that you are doing something of that nature. But we want to go one step further and say that if you don't do it—we feel there is an obligation that you should do it—then you shall suffer penalties for failure to do so if you have reason to believe that there has been improper use of your apparatuses.

That is the simple case here. You say that you are disinclined to embrace that suggestion. We are working on the idea now—we haven't come to any conclusion yet. We want to hear all the evidence.

I think we have covered it enough. Let's go on.

Mr. HAZEN. The transcript of the hearings on S. 3542 before a subcommittee of the Committee on Interstate and Foreign Commerce, U.S. Senate, 83d Congress, 2d session, held June 7 and 8, 1954, discloses that Mr. Warren Olney III, representing the Department of Justice; the Honorable Rosel Hyde, then Chairman of the Federal Communications Commission; and the carriers' representatives who appeared at the hearing, all supported the proposed amendment to the bill incorporating therein the substance of section 5(2) of the Model Anti-Gambling Act.

The following excerpt from the testimony of Mr. Hyde appears on page 10 of the transcript:

Mr. HYDE. Yes. And as I understood the point that was made here, if the telephone company discontinued the service because the sheriff or district attorney called and said that the facilities were being used for illegal purposes, then the telephone company would not have to respond to damages for discontinuing services on any complaint.

Mr. L'HEUREUX. You had, I believe, shown no objection to a similar provision in the last bill exempting the common carriers by wire and broadcasting under circumstances very similar to the present amendment. In other words, you never believed that the wire services should have to detect the violators; did you?

Mr. HYDE. No. We do not think that burden should be placed on the carrier, and do not think it should be placed on the Commission. We think the simple and direct way to handle this problem is to make it unlawful to transmit gambling information, and for local enforcing agencies to enforce that law. That is the way we think of it.

The CHAIRMAN. I don't think the quotation is in point at all. That is a statement for exculpation of the public utility. We are not asking that you become a law enforcement agency. I think it is perfectly proper that, if you have made disclosure, then you should be free from any damages for discontinuing the services. Everybody will agree with that.

Mr. HAZEN. Attention is also invited to the comments on section 5(2) by the drafters of the Model Anti-Gambling Act explaining the necessity therefor. Our views regarding the need for including a section 5(2) provision in legislation such as that here under consideration have not changed.

Being a common-carrier offering, the baseball-sports ticker service must be furnished to all who request it. The application form for the service, which must be signed by the subscriber, including newspapers, press associations, radio and television broadcasting stations, and owners of the teams participating in contests being reported, as well as others, specifically states that the information furnished over the ticker is not to be used for gambling or other illegal purposes.

The applicable tariff on file with the Federal Communications Commission contains the following provision:

4.2 The telegraph company reserves the right to discontinue the service when it receives notice from a law enforcement agency, acting within its apparent jurisdiction, that the reports furnished are being used by the subscriber in any manner, directly or indirectly, for gambling purposes or in violation of any Federal, State, or municipal law.

Western Union's leased facility service tariffs contain a substantively identical provision. Today all subscribers to such service are engaged in legitimate business.

Mr. CRAMER. This is already contained in your tariff, but you don't think it should be incorporated in the statutory law; is that correct?

Mr. HAZEN. We expressed our view that a penalty provision is not considered favorably by us.

Mr. CRAMER. But you would have no objection to the power to discontinue services with no penalty involved, as recommended by the bar association?

Mr. HAZEN. If I understand your statement correctly, sir, we do this now and would have no objection to discontinuing service where it is being used for illegal purposes.

As I said a while ago, we do this now if we have knowledge come to us that illegal use is made; or if we are notified by any law enforcement agency to this effect, we discontinue the service.

Mr. CRAMER. In how many instances have you refused service for the reason that you have knowledge—

Mr. HAZEN. It appeared that this might be an interesting question, and we have tried to make a quick survey. I don't have a complete picture. However, representative figures from sections of the country, I think, will give an indication of this situation.

In our eastern division, which comprises the States of Connecticut, Maryland, Massachusetts, New York, Pennsylvania, West Virginia, and Washington, D.C., we have removed 13 tickers.

The CHAIRMAN. How many?

Mr. HAZEN. Thirteen, for illegal use. We have refused service, refused to install them, in 20 instances where we had knowledge that the tickers would be used for illegal purposes.

The CHAIRMAN. In what period of time?

Mr. HAZEN. This is a 3-year period. This is out of a total of 807 total sports tickers. This is the number of sports tickers that are now in operation, sir—807, approximately that. In our eastern division, as I say, the figures for tickets removed in 3 years, over a 3-year period, obtained from this quick tentative survey, are 13 removed and 20 refused.

In our gulf division, as an example, we removed 42 tickers or refused service. Actually 26 were removed at notification of law enforcement officials that tickers were being used improperly. Sixteen were removed at the request of customers because of activities of the law enforcement agencies. We refused installation in five instances because we had knowledge that they would be used improperly. This is representative.

Mr. CRAMER. Out of how many tickers in the gulf division?

Mr. HAZEN. The gulf division, sir, has a total of 88. Of that 88, it might be of interest to note that 43 are installed in what we would consider to be unquestionably legitimate places—newspapers, radio stations, and television stations.

Mr. CRAMER. How many?

Mr. HAZEN. Forty-three. There are 40 others in the gulf division in locations of various kinds where we cannot be sure.

Mr. CRAMER. You say 26 were removed on request of law enforcement authorities, 16 on request of customers or objectors?

Mr. HAZEN. Yes, sir; and we refused to install five.

Mr. CRAMER. How many on your own volition—the company?

Mr. HAZEN. I would consider, sir, that the 26 removed at the request of law enforcement officers were ones that we had initiated in that we had notified the law enforcement authorities and in effect solicited their advice on them. This is our policy, our practice.

The CHAIRMAN. How many are there throughout the country?

Mr. HAZEN. How many removed? I don't have a total on this, sir.

The CHAIRMAN. You just have those two sections?

Mr. HAZEN. I can provide that. I have one or two other examples.

The CHAIRMAN. There were 75 apparently in the 2 sections.

Mr. HAZEN. In our lake division we have had 20 tickers removed in the past 3 years because of illegal use. This, sir, isn't broken down, unfortunately. That is, removed or where we have refused installation, a total of 20 in that division.

The CHAIRMAN. Of course the refusal to install might have been due to conditions other than possible improper use for gambling purposes.

Mr. HAZEN. Our survey, sir, was based on the use for illegal purposes. This was the way we phrased it.

The CHAIRMAN. Were any refused for credit reasons?

Mr. HAZEN. Not in this group, sir; no, sir. This is all illegal use refusals. In our eastern division—I mentioned the eastern division.

These wires, incidentally, have just come in. That is why I don't have them summarized.

The CHAIRMAN. Will you summarize the information for us and put it into the record later as to the number of installations which have either been refused or canceled, and give the reasons for that?

Mr. HAZEN. I will be very glad to, sir; yes, indeed.

(The information referred to follows:)

*Summary of the number of baseball-sports ticker installations which have been refused or removed in the last 3 years by Western Union because of illegal use as indicated below*

1. Number installations refused by Western Union on information received from police of probable illegal use.....	15
2. Number installations refused by Western Union on evidence of illegal use from other than police sources.....	3
3. Number removed by Western Union on advice of police of illegal use...	30
4. Number removed by Western Union on evidence of illegal use from other than police sources.....	63
Total.....	111

Mr. HAZEN. The service has been and is being rendered to subscribers other than those whose legitimate need therefor is clearly apparent from the nature of their business. Cognizant of this and of the possibility that the information being transmitted may be used for gambling purposes, Western Union nearly 10 years ago adopted a policy of notifying the chief of police having jurisdiction over an area in which a ticker was installed that we would maintain at our local office a list of names and addresses of all subscribers to the baseball-sports ticker service and to the 8A (leased facility) service which was then used to disseminate horseracing information but which service has since been discontinued. That policy was implemented by letter of January 8, 1952, to all division general managers, copy of which letter and accompanying notice addressed to the chief of police are attached hereto as appendix A.

The policy announced in the letter of January 8, 1952, is still being adhered to rigidly. Admittedly, there have been instances since then of illegal use of the information transmitted over our baseball-sports tickers. However, the responsibility for enforcing the gambling

laws rests with the police and other duly authorized law enforcement authorities fully informed as to the whereabouts of the telegraph company's tickers and leased facilities. We have furnished and will continue to furnish to such authorities any and all pertinent information (legally disclosable) desired or requested by them and will make available for questioning, on reasonable notice, any employee the police authorities may care to interview.

So far as Western Union services are concerned, we see no need for the enactment of a bill such as H.R. 3022. We think that more effective results would be obtained by including in a bill prohibiting transmission of gambling information a provision such as section 5(2) of the Model Anti-Gambling Act with a sentence added thereto reading:

Whenever, other than in answer to a subpoena or court order, a common carrier discloses to the Attorney General of the United States and to the corresponding chief law enforcement officer of the particular State involved or to such law enforcement agencies as they may designate, facts and circumstances relating to suspected illegal use of its facilities, such common carrier shall thereafter be immune from criminal prosecution under any law of the United States or of any State based upon its knowledge of such facts and circumstances and failure to take any other action thereon: *Provided, however*, That such grant of immunity shall not apply with respect to any violation of the provisions of the second sentence of this subsection.

We do not know how many persons have registered under the Internal Revenue Code provision mentioned in section 2 of H.R. 3022 but we doubt that any gambler who is required to register thereunder and who has not done so would file the affidavit specified in the proposed sections of 1084 and 1085 of title 18 of the Code. The addition of section 1086 of title 18, as proposed in H.R. 3022, might require common carrier employees to divulge contents of communications in violation of section 605 of the Communications Act. We also feel that the language "has reason to believe" found in the proposed section 1086 is too broad and general to serve any useful purpose for an individual's reason to believe anything may proceed from his own mental peculiarities or personal idiosyncrasies.

Mr. PEET. Mr. Chairman, may I interpose?

The CHAIRMAN. Yes.

Mr. PEET. Mr. Hazen, you mentioned the situation where gamblers have to file an affidavit when they pay a special gambling tax.

Mr. HAZEN. Yes, sir.

Mr. PEET. At the present time, do you inform the law-enforcement agencies of your suspicions that some of your tickers are being used for illicit purposes? Do you notify the Attorney General, the Treasury Department, and other Federal agencies regarding your suspicions?

Mr. HAZEN. No, sir. We do not.

Our practice has been to notify the local chief of police of the availability of these records.

Now, we would be happy—and this is one of our suggestions later on—to notify the prosecuting attorney, the State attorney general, any duly authorized Treasury agent, the FBI; we have no objection whatsoever to disclosing this information or to giving notification to these people each time a ticker is installed.

Mr. PEET. Up to now, you have accepted the situation where local law enforcement agencies have been derelict in their duty, and have gone no further in your informing?

Mr. HAZEN. This is correct. Yes, sir.

Mr. CRAMER. What if the American bar proposal is enacted, as you suggest, permitting you to withdraw services when the law-enforcement authorities request it. Suppose you don't withdraw services? How can you be penalized? What penalties are there? How can you be forced to do so?

Mr. OATES. May I answer that, Mr. Cramer?

Mr. CRAMER. Yes.

Mr. OATES. We probably would be subject to prosecution under State law.

The CHAIRMAN. But there would be no Federal supervision, except through the Federal Communications Commission.

Mr. OATES. That is right.

The CHAIRMAN. And if the Federal Communications Commission would have the right to refuse your renewal of your permit, or to institute proceedings to cancel your permit; now, Western Union is a very important segment of our business, cultural, spiritual society. It would be very difficult to cancel out the Western Union permit, and it would be very difficult to refuse to renew the permit, so that I don't think that the Federal Communications Commission has very, very much power in that regard.

Mr. OATES. Mr. Chairman, we would be perfectly willing to accept any type of penal provision for failure to remove except of course, in answer to—in obedience to an injunction. We have no objection to a penalty for failing to remove upon demand.

The CHAIRMAN. Go ahead.

Mr. HAZEN. Returning to H.R. 7039, the prohibition against use of the carrier's facilities for the transmission of bets or wagers presents no problem so far as Western Union's public message service is concerned. Our tariffs specifically ban the acceptance of messages and money orders filed for the purpose of placing bets or wagers and our clerks encounter little difficulty in recognizing such communications. However, the language "information assisting in the placing of bets or wagers" might present some difficulty from the standpoint of knowing precisely what is prohibited. We suggest the possibility that such language might be construed so as to require proof that the information transmitted actually did assist in the placing of a bet before there could be a conviction for violation of the section. We do not believe that the language is intended to mean "information capable of assisting in the placing of a bet" since that would cover practically any kind of a report on a sporting contest, even a weather report. We assume, but are not fully certain, that the quoted words should be construed as meaning "information intended to assist in the placing a bet." If that assumption is correct, we would prefer to see "intended to assist" substituted for "assisting."

In this connection, we invite attention to the definition of "gambling information" found in section 2(6) of the Model Antigambling Act and to the use therein of the word "intended." If it is the in-

tention of the framers of the bill that a telegraph clerk accepting a telegram from a member of the public should be presumed to know that, in connection with horseracing, such things as entries, scratches, jockeys, jockey changes, weights, probable winners, scheduled starting time of race, actual starting time of race, track conditions, the betting odds, changes in the betting odds, the post positions, the results, and the prices paid, are "information assisting (or intended to assist) in the placing of bets or wagers," then we think that the bill should be amended so as to include a definition of "gambling information" and to spell out clearly therein what specific type of information falls within the definition.

And, Mr. Chairman, may I ask that the appendix and the letter be incorporated as part of the record?

THE CHAIRMAN. The balance of that statement including the appendix, is received.

(The appendix is as follows:)

CND—TICKER SERVICE (SPORTS TICKERS)

PRIVATE WIRE SERVICES—LEASED CIRCUITS

NEW YORK, January 8, 1952.

Messrs. Folger, Fowler, Heininger, Little, Pitt, Semingsen.

In furtherance of our policy of cooperation with law-enforcement authorities in preventing illegal use of the company's communications services or facilities, arrangements should be made to promptly inform chiefs of police, or district attorneys of the availability for their inspection of a record of 8-A tickers and sports tickers in each of our offices where such tickers are in service.

All offices, divisional, and district, should have a copy of the application for service, or other record, for each sports ticker in their area. Offices not having a copy of sports ticker application (contract) shall immediately prepare a copy on form 1021-B from information available, or if that is not possible request the accounting center to prepare and mail a copy to them. A separate folder of copies of sports ticker applications shall be maintained at each office. Future applications for sports ticker service shall be prepared in triplicate and a copy placed in this folder. When service is discontinued, applications shall be removed from the folder so that there is a current and accurate record of sports tickers at each office at all times.

A record of 8-A tickers in service in your division is attached. Each office concerned should prepare a 3 by 5 card (or temporary substitute record if cards not readily available) for each 8-A ticker, showing name and address. Offices concerned should be informed of installations or disconnections so that new cards may be inserted, or old cards removed and the card record maintained on a current basis.

The foregoing application and card records should be set up with all dispatch. When the records have been set up in proper form, divisional city superintendents shall prepare and release over their signature to the local police chief, the attached letter.

District superintendents, after assuring themselves that an office having sports tickers or 8-A tickers has set up the records in proper form, shall promptly prepare and release to the local police chief the attached letter, filling in the location (city or town) of the office and the office hours. If in any case the town is without a police chief, the letter should be addressed to the district attorney or prosecuting attorney for the county in which the town is located.

Offices concerned shall be given a copy of the letter and should be instructed that if the police chief or district attorney calls to inspect their record of 8-A tickers or sports tickers, the records should be produced promptly and our employee should prepare a list of the tickers for the police chief or district attorney if requested.

Prompt action shall be taken to discontinue service in any case where the police chief, or district attorney, advises that our ticker facilities are being used illegally, as provided in existing instructions.

G. S. PAUL,  
*Assistant Vice President.*

Police Chief of -----

In accordance with Western Union's longstanding policy of cooperating with the police and other law enforcement officials in preventing illegal use of the company's communications facilities, this is to advise that a written record containing the names and addresses of subscribers for 8-A tickers leased by racing news companies is being maintained by the telegraph company's local office at -----.

8-A ticker equipment and the circuits interconnecting the equipment are furnished by Western Union on a leased basis only. An 8-A ticker lease consists of a central transmitting station connected by standard telegraph circuits to 8-A tickers on the premises of as many individual subscribers as may be designated by the lessee. As in any other leased service, all intelligence transmitted from the central transmitting station to the subscribers is gathered and transmitted by the lessee. Western Union does not gather or disseminate any of the intelligence which passes over the wires and the company has no legal right to act as censor of such intelligence.

The company also maintains a record of the names and addresses of the subscribers for its sports tickers. These tickers carry sports reports covering games played in the major sports, including baseball, football, and hockey which is gathered and transmitted by Western Union as a part of its commercial news department services. No horse or dog racing news of any kind is carried at any time in the company's CND reports. This commercial news department ticket service has been in operation many years, and its sports reports have been confined solely to results of sports contests, that is, scores by half inning or larger intervals on baseball and by periods for other sports. No advance information is furnished except the officially announced pitchers and catchers of baseball games and the official schedules of games being played.

The lease of both the 8-A tickers and sports tickers is made pursuant to a written application, the terms of which, including the rates, are set forth in tariffs filed with the Federal Communications Commission. Both the application and the tariff provide that the lessee will not use the service for any purpose or in any manner directly or indirectly in violation of any Federal law or the laws of any States where the equipment is located, and that the company may discontinue the service to any drop or connection or to all drops and connections when it receives notice from Federal or State law enforcing agencies that the service is being supplied contrary to law.

The records above referred to will be kept current and be available for your inspection during the open hours of the office, which are ----- to -----, so that at any particular time, you will be able to know the location of any 8-A ticker or sports ticker in your jurisdiction. If the company is advised by you that any of these facilities are being used illegally, it will, in accordance with its tariff provision, discontinue the service.

Please be assured of our continued cooperation.

Very truly yours,

Mr. HAZEN. For reasons which should be apparent from what has been said heretofore, we favor the enactment of H.R. 7039, with the following suggested minor changes:

On page 2, line 12, change "assisting" to "intended to assist."

On page 2, line 14, change "facilitating" to "intended to facilitate."

The provisions of this bill, in our opinion, are adequate to achieve the desired goal of protecting the legitimate and preventing the illegal use of the carrier's services and facilities.

On behalf of Western Union and myself, I wish to thank the members of this subcommittee for having given us the opportunity to submit this statement presenting our views.

Mr. FOLEY. Mr. Hazen, could you furnish this committee with the total amount of money which Western Union has paid to the Delaware Sport Service of Wilmington, Del.? That is, money orders that have come through your facilities payable to the Delaware Sport Service of Wilmington?

Mr. HAZEN. Sir, I cannot give you an exact figure. I can state this: That it is a tremendous quantity of money order transactions involved payable to this organization.

The CHAIRMAN. You don't have to give all. We don't want to put an insuperable burden on you. Give us between certain dates.

Mr. HAZEN. We will be glad to produce that information, sir.

Mr. FOLEY. Would you get it, say, for the last 2 months? Would that be too much trouble?

Mr. HAZEN. No trouble. As a matter of information, in this connection, we accept approximately 45 money orders daily for this organization. We will be glad to.

The CHAIRMAN. Is that all over the country?

Mr. HAZEN. That is the delivered number to this organization at Wilmington. Yes, sir.

(The information referred to follows:)

LEGAL—SURRENAS—PRODUCTION OF MESSAGES

NEW YORK, May 31, 1961.

52-5

Mr. PAUL: In compliance with your tubegram of May 29, we herewith itemize the money order handlings at Wilmington, Del., payable within the past 3 months to Delaware Sports Service, which also operates under the name of Delaware Wired Music:

Date	Delaware Sports Service		Delaware Wired Music		Aggregate handlings	
	Number of orders	Total principal amount	Number of orders	Total principal amount	Number of orders	Total principal amount
Feb. 24.....	36	\$1,080	3	\$125	39	\$1,205
25.....	36	1,135	36		36	1,135
26.....	2	45	1	45	3	90
27.....	18	700	18		18	700
28.....	21	615	2	90	23	705
Total.....	113	3,575	6	260	119	3,835
Mar. 1.....	21	620	2	55	23	675
2.....	32	1,015	1	25	33	1,040
3.....	41	1,155	3	80	44	1,235
4.....	25	805	3	65	28	870
5.....	1	20			1	20
6.....	22	745	2	65	24	810
7.....	17	555			17	555
8.....	25	805	2	100	27	905
9.....	21	705	2	35	23	740
10.....	35	1,430	2	40	37	1,470
11.....	15	465			15	465
12.....	3	60	1	25	4	75
13.....	24	699	3	135	27	834
14.....	22	685	3	115	25	800
15.....	30	1,175	2	70	32	1,245
16.....	22	780	2	50	24	830
17.....	47	717	4	210	51	927
18.....	26	1,005	5	100	31	1,105
19.....	4	115			4	115
20.....	21	690	1	30	22	720
21.....	25	875	1	75	26	950
22.....	23	650	3	70	26	720
23.....	22	855	4	105	26	960
24.....	39	1,185	4	115	43	1,300
25.....	17	570	3	90	20	660
26.....	2	45	1	25	3	70

Date	Delaware Sports Service		Delaware Wired Music		Aggregate handlings	
	Number of orders	Total principal amount	Number of orders	Total principal amount	Number of orders	Total principal amount
Mar. 27.....	34	\$1,100	2	\$50	36	\$1,150
28.....	26	760	3	45	29	805
29.....	34	950	3	100	37	1,050
30.....	36	1,170	1	20	37	1,200
31.....	8	230	1	25	9	265
Total.....	720	22,026	64	1,930	784	24,556
Apr. 1.....	23	580			23	580
2.....						
3.....	18	695	2	45	20	740
4.....	21	710	1	25	22	735
5.....	25	765	1	25	26	790
6.....	29	1,100	1	10	30	1,110
7.....	33	1,082	1	80	34	1,112
8.....	23	840	2	50	25	890
9.....	1	15	1	35	2	50
10.....	30	930	3	85	33	1,015
11.....	20	650	1	35	21	685
12.....	15	380			15	380
13.....	23	665	4	120	27	785
14.....	30	1,205			30	1,205
15.....	19	545	2	45	21	590
16.....	4	110			4	110
17.....	35	1,112			35	1,112
18.....	20	565	2	60	22	625
19.....	20	725	1	40	21	765
20.....	21	690			21	690
21.....	25	695			25	695
22.....	29	980	1	25	30	1,005
23.....	1	40			1	40
24.....	26	825	2	55	28	880
25.....	13	370	1	25	14	395
26.....	23	825			23	825
27.....	20	675	2	30	22	705
28.....	20	690	3	80	23	770
29.....	21	685			21	685
30.....	3	80			3	80
Total.....	591	19,229	31	820	622	20,049
May 1.....	32	1,230	3	145	35	1,375
2.....	19	725	1	25	20	750
3.....	14	430	3	100	17	530
4.....	15	500	2	60	17	560
5.....	23	755	3	100	26	855
6.....	29	836	2	45	31	881
7.....	7	220			7	220
8.....	13	425	3	60	16	485
9.....	23	780	3	125	26	905
10.....	19	635			19	635
11.....	12	440	1	30	13	470
12.....	22	760	3	125	25	885
13.....	23	715	2	65	25	780
14.....	6	265			6	265
15.....	20	480	5	210	25	690
16.....	17	700	3	160	20	860
17.....	16	440	1	50	17	490
18.....	25	795	2	40	27	835
19.....	20	775	1	25	21	800
20.....	31	975	3	155	34	1,130
21.....	2	70			2	70
22.....	14	500	3	105	17	605
23.....	20	610	1	30	21	640
24.....	16	460	3	105	19	565
25.....	15	425	3	55	18	480
Total.....	453	14,946	51	1,815	504	16,761
Grand total.....	1,877	60,376	152	4,825	2,029	65,201

E. C. CHAMBERLIN.

Mr. PEET. Mr. Chairman, I have a question.

The CHAIRMAN. Yes.

Mr. PEET. Mr. Hazen—

Mr. HAZEN. Yes, sir.

Mr. PEET. Could you tell us what presently happens when you find an employee of Western Union is cooperating with gamblers in the transmission of gambling information?

Mr. HAZEN. Sir, cooperating in the sense of participating?

Mr. PEET. Assisting the gambler in the transmission of any information in any way. Do you have a policy of treating such employees?

Mr. HAZEN. There certainly would be, in my opinion, a call for disciplinary action—dismissal. I know of no cases of this kind, offhand.

Mr. PEET. You know of no instances?

Mr. HAZEN. Where an employee of ours has been participating or assisting a gambler in transactions of his business.

Mr. CRAMER. Do you have any employee rules or regulations which spell out the company's responsibility and, therefore, the employee's responsibility, for making known any information concerning the illegal use of your facility?

Mr. HAZEN. In the early 1950's, sir, in connection with the discussions then revolving around the 8-A ticker service, the former race-horse ticker service, we issued instructions to the employees, Mr. Oates referred to it previously, requiring the reporting of any information which they came in possession of, indicating gambling.

The CHAIRMAN. Thank you very much, sir.

I want to thank you and the counsel very much for your contribution this morning, and any additional information you want to give us, we welcome you to do so.

The next witness is Mr. Albert Woll.

#### STATEMENT OF J. ALBERT WOLL, ESQ., GENERAL COUNSEL, THE AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS

The CHAIRMAN. Mr. Woll is the distinguished son of a distinguished father.

Mr. WOLL. Thank you, Mr. Chairman.

The CHAIRMAN. Your father made great history for the labor movement.

Mr. WOLL. That is very kind and generous of you. I appreciate it very much.

May I proceed?

The CHAIRMAN. Proceed.

Mr. WOLL. First of all, I want to thank the chairman and the committee for its kindness in giving us the opportunity to express our views today.

I might say I have a prepared statement. It is nine pages long. I believe I can summarize the statement, if it is the wish of the chairman and the committee. I can read it, however, if you so desire.

The CHAIRMAN. We will put your statement in the record.

Mr. WOLL. All right. I will do that, then.

First of all, I would like to recall that the American Federation of Labor and Congress of Industrial Organizations is a labor center that has affiliated with it, a great number of national and international unions, and the membership of these national and international unions comprise approximately 13 million people. These are all workers, and we are vitally interested in their welfare and we are concerned with the protection of their rights.

The American Federation of Labor, I believe, has amply demonstrated that it will have no truck with racketeers or with subversive groups. The constitution of the American Federation of Labor provides as one of its basic principles, that it shall be free from infiltration on the part of gangsters and racketeers and as I say, subversive groups.

Implementing this constitutional principle, the American Federation of Labor has adopted codes of ethical practices setting up high standards of trade union morality to govern affiliated organizations and the officers who are with these organizations. It has not given only lip service to these codes but it has implemented these codes by positive action, as it has at times, when necessary, expelled organizations from the American Federation of Labor.

On the other hand, the American Federation of Labor has also been very vitally interested in the espousal of civil liberties. In that connection, it has passed resolutions at its conventions, and has written briefs in various courts in the United States in support of the protection of personal liberties and it takes the position that while we do have the problem of organized crime, that we also must look at this problem in a way, if we can, that will not infringe upon personal liberties, and it is with this, you might say, dual concern, that I appear before you today, and on this occasion, I would like if I may to discuss what might be called the immunity provisions of the various bills that are now before this committee for consideration.

The first proposal that I would like to comment upon is the proposal by Congressman Zelenko, who has introduced H.R. 1246.

H.R. 1246 would amend a present statute on immunity. It would amend section 3486 of title 18 of the United States Code and it would amend this section by broadening the power to grant immunity from criminal prosecutions, where a witness is compelled, after having asserted a privilege against self-incrimination, to testify.

At present, the statute that this bill seeks to amend is confined to the matter of granting immunity to witnesses in proceedings that involve the national defense or national security. Now, the Congress had before it in 1954, when this act was passed, this matter of immunity and it saw fit at that time, to restrict this power to grant immunity and it did restrict it to those matters involving national defense and national security.

I wish also to call your attention to the fact that the Attorney General, when he appeared here on May 17, did not give support to this H.R. 1246. He did endorse another bill which I will speak about in just a moment.

The broad authorization that would be accomplished by H.R. 1246 would give the power to grant immunity with respect to testimony that is compelled, where the investigation, either before Congress or before a grand jury or in a proceeding in a Federal court, involves any matter that affects interstate or foreign commerce or the free flow thereof.

Now, this obviously has a very broad reach and we feel that it does raise serious policy questions for Congress and perhaps constitutional questions.

First of all, I think we should regard with great caution any attempt to substitute, you might say, a grant of immunity for the fifth amendment. That has been pointed out time and time again by great educators and people who are learned in the law and in my statement, I refer to a statement by Dean Griswold, of Harvard, who, concerning the 1954 immunity statute, stated that, because he attached so much importance to the fifth amendment and the values which it symbolized, that he looked with misgivings on the 1954 statute.

Well, of course, this bill goes way beyond the 1954 statute and it causes me concern from the constitutional point of view because I am not too sure in my own mind that the Supreme Court is ready to approve such a broad grant of immunity.

Now, it is true, in *Ullmann*, that the Supreme Court upheld the power of the Congress to grant immunity from prosecution, even in State courts, where testimony was compelled regarding matters concerning national security.

However, I think that there is some serious question whether this rule would extend to upholding congressional power to grant immunity against traditional State prosecutions, including prosecutions for major crimes, whenever testimony is compelled regarding many kinds of Federal crime, including minor offenses.

At this point, I would like to mention that there is a Federal criminal provision which is known as section 43 of title 18 of the United States Code.

Now, under that provision, it would be a Federal crime—this relates to interstate commerce—and it would be a Federal crime for a person to transport in interstate commerce, alligator grass.

Now, conceivably, this proposed amendment of Congressman Zelenko would warrant the granting of immunity where there is investigation as to whether alligator grass was shipped in interstate commerce. In the course of that type of investigation, you may possibly give immunity from State prosecution to very serious type of State crimes. I do think that the Supreme Court might be concerned as to the extent of this power that would be given to grant immunity, particularly when it may affect serious State crimes. That also should be considered by Congress as a policy matter. Let us look at a situation where there is an investigation with respect to a violation of the Dyer Act, which would involve the interstate transportation of stolen automobiles. It is very important of course, to try to find out whether there is a violation of the Dyer Act.

Let's say immunity is given in order to compel testimony with respect to that. Let us say in the course of this testimony, it is disclosed that in the stealing of this automobile, and, prior to the transportation of it across State lines, a person is murdered.

Now, then, we do have the situation where we have a very serious State crime which may not be prosecuted because of the desire to catch the culprit on a Dyer Act violation.

I think those illustrations raise serious policy questions and I suppose we could enlarge on those almost at will.

The CHAIRMAN. Isn't that the risk you take under any general provision?

Mr. WOLL. You always take the risk in the general immunity provision, but my point is, Why take a risk or give a prosecuting attorney the authority to take a risk in a minor type violation, where a more serious type violation may be excused and immunized; and I say that if you are going to make a broad grant of immunity, just in matters affecting interstate commerce, you do possibly run into that risk. I think that is a matter that Congress should consider very carefully.

Now, that will dispose of any verbal observations with respect to H.R. 1246. I would like now to turn to H.R. 3021, the bill introduced by Congressman Cramer and also H.R. 6909, and particularly to title 7 of that particular bill.

I might say that the provisions contained in H.R. 3021 have been incorporated in title 7 of H.R. 6909, so that when I speak of the bills or the bill that Congressman Cramer introduced, I am speaking of both provisions.

While I will be pointing out what I think are valid objections to these bills, I believe the objections that I point out will also be valid with respect to H.R. 1246.

Mr. CRAMER. The bills you are discussing now are the ones recommended by Attorney General Kennedy, and Attorney General Rogers, prior thereto; isn't that correct?

Mr. WOLL. I believe Attorney General Rogers supported the bill when it was in the Congress in 1959.

Mr. CRAMER. He recommended it; did he not?

Mr. WOLL. I am not too sure whether he recommended it or not. He may have recommended it.

Mr. CRAMER. He re-recommended it this year on January 17 by executive communication.

Mr. WOLL. That is correct.

Mr. CRAMER. And Attorney General Kennedy recommended it by executive communication shortly thereafter.

Mr. WOLL. Yes. I think in his testimony before this committee he specifically endorsed it. I think that is true.

Mr. CRAMER. Yes.

Mr. WOLL. I assume that this committee is quite well acquainted with the language of these two bills by this time, because you have had numerous hearings on it.

I might say that this bill would grant immunity where testimony is compelled, where there is a grand jury proceeding or a court proceeding, into transactions involving the Hobbs Act or the Anti-Racketeering Act; and also involving section 302 of the Taft-Hartley Act.

The Hobbs Act applies in terms to any person who obstructs commerce by robbery or extortion. In practice, it has been used almost invariably against labor union representatives. Section 302 of the Taft-Hartley Act makes employers and employee representatives equally guilty of a crime when there is an unauthorized payment by the employer to the employee representative.

Again, in practice, this statute 302 has generally been used to prosecute union officials receiving unauthorized payments.

The research that I have been able to make of the reported decisions reveals there is only a handful of cases in which employers have been prosecuted under section 302. The effect of this, of course, is that the proposal of Representative Cramer will single out for express

treatment, from the whole gamut of Federal criminal statutes, two provisions that are peculiarly adapted to prosecutions of union officials and agents.

Now, for such special treatment, we contend there must be a special reason.

We have examined those portions of the statements made on May 17 by the Attorney General and Representative Cramer in support of Representative Cramer's proposals on granting immunity to witnesses in labor racketeering cases. We find no concrete facts or specific figures whatsoever to justify the conclusion that there is a compelling problem in connection with prosecutions for violations of the Hobbs Act and section 302 of Taft-Hartley that these two criminal provisions must be singled out from all others for separate treatment.

In view of the sensitive nature of any immunity legislation, of which we think this committee is well aware, we believe that the lack of any clearly demonstrated need should cause this committee great concern and should cause it to hesitate with respect to these two proposals.

However, this leads to a more important consideration and that is this:

We believe that the immunity provisions that Representative Cramer would like to see embodied into Federal law would actually be discriminatory against union officers and representatives, and this is why we think that is so. The Attorney General, on May 17, when he appeared before this committee, quite frankly stated that this particular immunity statute would be used to grant employers immunity against Taft-Hartley violations, in order to secure their testimony in prosecutions of labor representatives under the Hobbs Act.

Now, to understand what this means, we must examine carefully the difference between the violations of the Hobbs Act and violations of section 302 of the Taft-Hartley Act.

Now, in each instance, money may have been passed from an employer to an employee representative, but in the Hobbs Act violation the employer has parted with his property usually because he has been subjected to violence, or threatened violence, or has been put in fear of damage to his property, to his person, or even economic loss.

In the typical Taft-Hartley violation, on the other hand, the employer has made a payment which is more in the nature of a bribe.

Clearly, the employer in the Hobbs Act situation is an innocent victim, while in the Taft-Hartley situation he is equally guilty with the union man. It further seems clear that no responsible U.S. attorney would subject an employer who has been victimized by a genuine Hobbs Act violation to prosecution for violating Taft-Hartley. By the very nature of the mental states, the two statutes are mutually exclusive.

I might point out, this is a fair interpretation of the Attorney General's statement when he appeared before this committee on May 17, that he considered there would not be a possibility of a prosecution of an employer under section 302 where the employer has made payments as a result of threats to his property or to his person or threats which induced fear in his mind of economic loss. I think that is inherent in the Attorney General's statement of May 17.

Now, how would this affect the operation of the proposed immunity statute? Imagine that a U.S. attorney is questioning an employer

who has passed money to a union agent. The U.S. attorney suspects a Hobbs Act violation, but the employer refuses to talk. What does this mean? It means if there is a genuine Hobbs Act violation, the employer paid the money because of violence or fear. He is not subject to a Taft-Hartley prosecution, and he may freely testify without any worry under the law as it now stands. On the other hand, if the employer made an unauthorized payment without being subject to compulsion, he is equally guilty with the employee representative who received the money of committing a violation of the Taft-Hartley Act. To immunize this employer against prosecution in such a situation is to give favored treatment to one of two equally guilty parties.

In that connection, I would like to point out that usually, where you grant immunity, it is granted in situations where one party may not—his guilt may not be as great as another person's, or perhaps where there are extenuating circumstances involved in the matter of the commission of crime. Immunity is generally given where there is a crime that is participated in by two or more people, and it is generally, as I say, given to the person whose guilt is the lesser, but in a Taft-Hartley violation the guilt is equal because the guilt is on the employer giving the unlawful payment to the union representative and on the union representative in receiving the unlawful payment. There the guilt is equal and no preference should be given. But such preference is indicated in the testimony of the Attorney General, that immunity will be granted to the employer. And so we claim that therefore there is unequal treatment with respect to this particular type of crime under section 302.

Mr. CRAMER. May I ask a question, Mr. Chairman?

Mr. HOLTZMAN. Yes.

Mr. CRAMER. The Attorney General, in his statement before the committee, page 29, also made this observation:

In addition, in Hobbs Act violations we very often run into a situation where a person is a conduit for funds from an employer to a labor racketeer. The conduit, while not the most culpable person involved, is nevertheless able to and under the present law justified in refusing to answer any questions about the transaction on the basis of his constitutional privilege. If the present bill is enacted, we will be able to require testimony from the least culpable of the conspirators and obtain the proof we need for conviction of the real offenders.

That could very easily give immunity to an employee, could it not?

Mr. WOLL. It could give immunity to anyone, whatever his capacity, if he is a conduit.

The objection that I have in that connection is that there is no showing at all before this committee that the process of using a conduit is at all prevalent. The cases that I have examined, to the extent I am able to examine, all indicate to me that there have been very few if any situations where there have been prosecutions where a conduit was involved.

Generally, where there is a payment made by an employer to a union representative, the people to the transaction are the union employer and the union representative, and what becomes important in those type of cases is the mental state of that employer.

Did he give that payment as a bribe, or did he give it as a result of fear of violence? To grant immunity to this man who has given this payment in order to try to get him to testify against a union representative under a Hobbs Act, I think, is discriminatory.

Mr. CRAMER. The reason I mentioned it is it is not discriminatory in the sense that it equally applies to both management and labor in providing an immunity. Where management or labor is involved, management is a principal, and possibly an employee is a conduit. So in other words, the bill is not purposely drafted to give favored treatment to anybody.

Mr. WOLL. Well, it certainly has in it the seeds of discrimination.

The CHAIRMAN. I would not say that former Attorney General Rogers, or Attorney General Kennedy were promanagement, or wanting to penalize labor improperly. It is just wherein the statute is in conflict in getting evidence that necessitates some immunity provisions.

Mr. WOLL. Well, I certainly do not take the position that the Attorney General is antilabor. I do not do that. I wish to make it very, very clear that that is not—

The CHAIRMAN. I think, Mr. Woll, you point out something that really requires consideration because I think the hearings on labor racketeering did disclose there were various instances where the employer and the employer's agent acted and generated actually, the bribe.

I think this is something that we have to consider—the mental attitude of the employer as well as the employee. I think this is the nub of the question here.

Mr. CRAMER. I realize that, Mr. Chairman, but the fact that the court itself has jurisdiction to make these decisions does not that give—

Mr. WOLL. I don't think that the court—

Mr. CRAMER. I withdraw the question.

Mr. WOLL. Going back to Congressman Cramer's observation, I would like to point out that this statement of the Attorney General does appear on page 29. It says:

This proposal \* \* \*

that is, the proposal for immunity—

will permit us to call the businessman before the grand jury, compel him to testify as to the transactions. If he first refuses to answer the question on the basis of his constitutional privilege, he could be given immunity against prosecution for any matter, thing, or transaction about which his testimony is compelled. We will then be able to obtain the evidence we need against the person who is most culpable in the matter—

that is the Hobbs Act—

While relieving the fears of the person who has been wronged.

Now, I say that that is a dangerous power to determine who has been wronged before there is any, you might say, determination of that in a court, before a jury, and this is what gives me some concern in connection with this.

As I say, I am fully satisfied that the Attorney General does not intend to discriminate against union people.

Mr. PEET. Mr. Woll, are you generally in favor or opposition to a policy of granting immunity, to get at the small fry, where serious interstate crimes are involved?

Mr. WOLL. Well, let me put it this way. That question is one for Congress and if Congress thinks it is necessary, then I say that the immunity, that the power to grant immunity, should be carefully considered by Congress and Congress should be selective in the matter

and grant the power only in those situations where Congress is quite certain there will be fairness all around, and the interests of justice would require. As in a situation such as you mentioned, where perhaps, to get at a more serious violator, you may grant immunity in a case of minor importance. But I am pointing out to the committee that the peculiarities of the Hobbs Act and 302 are such that an employer could almost determine in any given instance, whether there is a Hobbs Act case or whether there is a case under 302. Now, if you grant him immunity under 302 that employer has nothing to worry about. He cannot be prosecuted under 302. He has been granted immunity. He is given the opportunity then to make a victim of himself. He might not want to get up like an accomplice would, who was granted immunity, and confess his guilt, and say, "Yes, I am a robber. I am a burglar. I am this. I am that. I am a bad man." He will say, "No. I am a very fine businessman who is conducting himself properly, but this labor representative came in there and he frightened me to death. I paid the money because of that."

The CHAIRMAN. Especially if it were actually the case that he generated the bribe himself.

Mr. WOLL. Well, it is in his mind, see. That is the whole thing.

It is really serious because of the fact the courts have sustained convictions merely on testimony given by an employer that what this man said put him in fear of economic loss. That testimony was sufficient to establish an essential element of the crime. If that were not present, the employer would be guilty of making an unlawful payment of some sort; but he is going to be granted immunity on that.

The CHAIRMAN. Since he is the one that is going to make the disclosure, he could elect the better avenue for himself.

Mr. WOLL. I think there is a great tendency on the part of an individual who is now compelled to testify, to convince himself quite readily that he was an innocent victim. You know, it was not too difficult, according to Shakespeare, to convince Polonious first, there was a little cloud; then a big cloud; then a lot of other things, when it suited the purpose of the individual to say that.

I might point out, in the report on the 1954 act, this act we are speaking about that is proposed to be amended, that the minority members of the committee said that the grant of immunity can affect men of good character, so they become liars and cheats and everything else in order to escape. Those are the problems that we see in this type of legislation.

Mr. PEET. May I ask a question?

The CHAIRMAN. Yes.

Mr. PEET. I have another part of that earlier question. If it were possible—I don't know whether it is—to restrict the immunity provision to syndicated criminal activities, in interstate commerce, letting the chips fall where they may, under a proper administration of such an immunity statute, would the same objections that you voiced true here—including investigation?

Mr. WOLL. I would like to learn first what you mean by syndicated criminal activities because my experience has been that, with respect to the Hobbs Act, there have been very few cases which have disclosed that the union representative who was guilty of the Hobbs Act violation, was any part or parcel of the syndicated criminal activity.

Mr. PEET. Therefore, under such a statute, such cases would not be included?

Mr. WOLL. I don't know whether they would be included or not. That would depend on the operation of the act; how it was worded but it would seem to me that in most situations, under the Hobbs Act you have a picture of a union representative who has been in office for some time, not connected at all with racketeering activities, and suddenly, he is confronted by the statement that the employer had been paying him money at Christmastime, and whatnot, in order to keep labor peace.

Mr. CRAMER. There are numerous precedents, are there not, for immunity statutes relating to specific situations such as Antitrust; the Clayton Act, section 32 of title 15 of the Antitrust Act, which has a very broad immunity statute providing that:

No person can be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under section 1-7 of this title and all Acts amendatory thereof or supplemental thereto, and sections 8-11 of this title: *Provided*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

Mr. WOLL. Well, what I am speaking about is the application of the power to grant immunity in relation to the Hobbs Act and section 302 of the Taft-Hartley Act. I recognize there are immunity statutes where there is a whole legislative scheme with respect to regulative agencies and the enforcement of the power given to these agencies that regulate economic matters.

Mr. PEET. Suppose, Mr. Woll, the grant of immunity was limited to syndicated crime as defined in title 1 of H.R. 6909?

Mr. WOLL. As substantial concerted activities in, or affecting, interstate or foreign commerce, where any part of such activity involves violations of law, Federal or non-Federal.

No reference is made whatsoever to 302 or the Hobbs Act or anything like that.

I think if the Congress is disposed to grant immunity, of course, that would grant us greater protection than it would as now drawn. We still do have the problem, however, in 302 and the Hobbs Act.

Mr. PEET. The discriminatory provision, or portion of it, might have been eliminated?

Mr. WOLL. That may be. The concerted activity language that you employ may be helpful in our situation.

Mr. FOLEY. If you had two people in a conspiracy and they committed a Hobbs Act violation, would that not come within that definition?

Mr. WOLL. Well, perhaps you can tell me a situation where an employer was in what might be a conspiracy with a union representative, to have that employer pay that money to the union representative under fear.

When you get a conspirator in the case, he is conspiring either with the employer or against the employer.

Mr. FOLEY. Let's suppose that the violation is an agreement between you and me to shake down a truck. It is just a conspiracy between two of us. We go ahead and do it. Would that not be concerted activity? Would it have affected interstate commerce?

Mr. WOLL. Yes, it would.

Mr. FOLEY. Conspiracy resulting in violation of the Hobbs Act, would come within that definition.

Mr. WOLL. I am not acquainted with the fact that there have been a great number of conspiracies in connection with the Hobbs Act. Most of the prosecutions of which I am aware are simply situations where the employer says, "I paid money under fear" and the union representatives said, "I know he was perfectly happy to give me the money. He wanted to treat me like a good fellow, and what-not." Then the question is for the jury.

Mr. CRAMER. That is a question of whether two people would be in "a substantial concerted activity," but then the purport of your testimony is that you object to the effect of granting an immunity as it relates to employers as compared to employees, and that this is, as you say, discriminatory—discriminatory in effect—do you disagree?

Mr. WOLL. I also take the position that I don't see the need for this type.

Mr. CRAMER. That is the very point. You say there is no need. You disagree with the Attorney General's statement, when he referred—that is, Attorney General Rogers, in his referral letter to the Congress, when he stated, discussing this same proposal:

In labor racketeering cases, the experience of the Department of Justice demonstrates an urgent need for legislation to permit a compelling of testimony before grand juries and courts in Hobbs Act and certain Taft-Hartley Act cases.

Mr. WOLL. I certainly have great respect for the Attorney General, and any person who has the honored position of being the Attorney General, but I don't think I am quite willing to accept the conclusion of the Attorney General without knowing what the information is that led him to that conclusion and I do not see any of that information before this committee.

Now, if you want to take the word of the Attorney General with respect to the urgent need, without inquiring further as to what it is and how it operates, then that is up to you but I say, I don't think that I would be willing merely to take the conclusion without having the—

Mr. TOLL. There has been no demonstration up to this point of any facts to justify that statement in these hearings so far.

Mr. CRAMER. Other than what the Attorney General testified to himself.

Mr. TOLL. I mean, no facts were submitted on which we could draw conclusions.

The CHAIRMAN. In other words, the Attorney General made a statement. We have as yet, not received the documentary facts.

Mr. WOLL. It would seem to me the committee should have before it some information upon which to make an intelligent judgment in that regard.

I am not in a position to quarrel with the Attorney General's statement. I don't see the need, is all I am saying.

Mr. CRAMER. Are you suggesting then that the proper approach of this committee would be to hold full and exhaustive hearings on this and other questions relating to organized crime to determine the factual circumstances and out of that, perhaps, draw legislative con-

clusions as to what is needed to combat crime in the form of a special subcommittee or this subcommittee or otherwise?

Mr. WOLL. I don't suggest that Congress do anything. The only thing I do say is, I think that this committee should satisfy itself. Now, if the Attorney General's statement satisfies you, that of course, is a matter for you, Mr. Congressmen.

Mr. CRAMER. You are not suggesting that the Attorney General's statement was made without serious consideration and study within the Department of the facts available, are you?

Mr. WOLL. Well, I assume that he has made some study but I don't know. I just don't know.

The CHAIRMAN. I assume you are merely stating, as I take it, as I conclude it, Mr. Woll, that based on what you have, the information that comes to you, the statement of the Attorney General, that on that basis you find that you cannot agree with this conclusion?

Mr. WOLL. On the statement that was made, yes.

I don't think there has been any need demonstrated here.

Mr. CRAMER. I understand the gentleman's position.

I would suggest that the subcommittee request of the Attorney General a memorandum of fact, sustaining his position, as he testified before this subcommittee, to be submitted at his earliest convenience, as a part of these hearings.

The CHAIRMAN. I will be happy to discuss that with Chairman Celler. We will take it up in the subcommittee.

Mr. WOLL. Did you address a question to me, Mr. Chairman?

The CHAIRMAN. No.

Mr. WOLL. I have just one other point to make.

I would like to point out also that after the McClellan hearings which went into so-called racketeering, the Congress considered remedies to be adopted as a result of the McClellan hearings and the Congress did enact legislation and it is called Labor Management Reporting Disclosure Act of 1959.

Now, in that particular act, there are a number of provisions, all of which Congress thought were needed to clear up the situation of labor racketeering.

One of the provisions is section 504.

This section makes it a criminal offense for a person to hold a responsible union office if he has been convicted of certain crimes, including the Hobbs Act, within a period of 5 years, and it also makes it a crime for a person knowingly to allow the man to remain as a union representative if he has any power to remove him.

Now, it would seem to me that at that time, at least in 1959, the Congress felt that this was a sufficient method of dealing with so-called labor racketeering.

Now, I throw out the suggestion that it might be well for us to consider whether or not we ought to let this act operate a little bit before we start passing immunity statutes in relation to the Hobbs Act.

The act has been in effect only since September of 1959, and it would seem to me that some consideration might be given to whether or not it is going to effectively take care of some of these problems.

I might also point out that if individuals are not going to be able to serve as responsible union representatives, because they have a certain type of criminal record, it would seem you are going to have two things happen.

One is that a man is going to be very careful that he does not try to extort money from an employer, because if he is convicted under the Hobbs Act he will not be allowed to hold a union office for a period of 5 years thereafter.

The second thing that occurs in a situation where a person has been convicted of certain type crimes is that, under the Landrum-Griffin Act, he cannot hold a union office, and therefore, he will not be in a position to extort money from employers.

I think serious consideration should be given whether or not this statute may not be effective; at least Congress thought it was in 1959 when it had all of the McClellan disclosures before it.

With that, I urge this committee to reject the proposals that have been advanced with respect to these immunity provisions and I ask that you reject them on the ground that they are not needed, at least no need has been shown, and on the ground that they are discriminatory and pernicious.

The CHAIRMAN. Thank you very much.

Mr. Toll, any questions?

Mr. TOLL. No. I think Mr. Woll has very clearly presented that feature of these bills which empower the specific subject and stray away from the general purpose of the whole package, which is getting into this question of syndicated crime.

The CHAIRMAN. Any further questions?

(None.)

The CHAIRMAN. Thank you very much, Mr. Woll, for your statement.

Mr. WOLL. Thank you, Mr. Chairman.

(The statement of J. Albert Woll, Esq., is as follows:)

Mr. Chairmaa, my name is J. Albert Woll. I am the general counsel of the American Federation of Labor and Congress of Industrial Organizations, and am appearing on its behalf. Before proceeding, I would like to express our deep appreciation of the subcommittee's kindness in granting us this opportunity to appear before it to present our views.

As you know, the federation is primarily composed of national and international labor organizations representing approximately 13 million working people in this country. I think the AFL-CIO can be justifiably proud of its record in taking vigorous stand against racketeers and subversive elements in American society, and at the same time never faltering in its espousal of civil liberties. The federation's codes of ethical practices and its expulsion of organizations failing to meet proper standards of trade union conduct are conclusive proof of the firmness of the federation's opposition to any attempt by crooks or racketeers to infiltrate and victimize the labor movement. On the other hand, the federation, through coaction resolutions and briefs in court cases, has continuously maintained that the fight against subversion and organized crime can and must be carried on without infringing our traditional personal liberties. It is in this spirit of a dual concern that I approach the consideration of certain of the bills now pending before this committee.

The proposals which I would like to discuss are those dealing with the granting of immunity from criminal prosecution as a means for compelling testimony. There are two principal types of such bills.

The first proposal is contained in H.R. 1246, introduced by Representative Zelenko. It would amend the current immunity provision of 18 U.S.C. 3486 so as to authorize the granting of immunity from criminal prosecution as a means of compelling testimony by any witness in a congressional investigation or Federal grand jury or court proceeding relating to "any matter which affects interstate or foreign commerce or the free flow thereof." Any witness who is compelled to testify under this provision after having claimed his privilege against self-incrimination would thereafter be immune from either Federal or

State prosecution on account of any transaction about which his testimony is compelled.

This is obviously an extraordinarily wide-ranging proposal. It goes far beyond the present immunity statute, which is specifically limited to matters involving national security, and which even with this limitation was enacted in 1954 only over the protests of several members of this committee, including the present chairman. The type of broad authorization for granting immunity represented by H.R. 1246 also received no support in the testimony of the Attorney General before this subcommittee on May 17.

There are serious policy, and possibly constitutional, objections to this proposed legislation, which I will only allude to. First of all, any proposed substitute for the fifth amendment privilege of silence must be viewed with caution. As Dean Erwin Griswold of Harvard said concerning the 1954 act: " \* \* \* because I attach so much importance to the fifth amendment and the values which it symbolized. I look with misgivings upon this statute." ("The Fifth Amendment Today 80" (1955).) The 1954 statute found justification in the overriding concern of Congress for the preservation of national security. Other statutes providing for immunity have typically been confined to testimony before Federal agencies entrusted with specific powers in the field of economic regulation. Unlike these limited authorizations, the present proposal would in effect cover a vast area of the field of Federal crime (though not all the most serious offenses by any means), since so many Federal criminal enactments are based upon the commerce power. In *Ullmann v. United States*, 350 U.S. 422 (1955), the Supreme Court upheld the power of the Congress to grant immunity from prosecution even in State courts where testimony was compelled regarding matters affecting the "national security." There may be some question whether this rule would extend to upholding congressional power to grant immunity against traditional State prosecutions, including prosecutions for major crimes whenever testimony is compelled regarding many kinds of Federal crime, including minor offenses.

Prescinding from any constitutional problems, however, a most serious policy issue is posed by this bill. Suppose Federal officials compelled testimony as a means of securing evidence regarding the transportation of stolen automobiles across State lines. Suppose that in the course of this compelled testimony it was revealed by the witness that he had committed murder in the process of transporting the automobiles across a State line. Apparently, both the Federal and State authorities would now be totally foreclosed from any prosecution in such a situation. This example could be multiplied to indicate many instances in which compelled testimony regarding a relatively minor offense might well tie the hands of Federal and State prosecutors when the existence of far more serious crimes, connected with the lesser offense, was disclosed by the compelled testimony.

Having registered these general objections to H.R. 1246 I am next going to proceed to a discussion of the proposal made by Representative Cramer for a more limited grant of immunity in cases involving labor racketeering. Before doing so, however, I might point out that most of the specific objections we have against Representative Cramer's proposals would likewise be applicable to the more general immunity statute proposed by Representative Zelenko.

Representative Cramer's proposals are embodied in H.R. 3021 and in the substantially identical provisions of title VII of H.R. 6909. These bills would add an entirely new section to the Criminal Code. This would enable a U.S. attorney, upon the approval of the Attorney General, to secure a Federal court order compelling the testimony of any witness in any proceeding before a Federal court or grand jury involving the violation of 18 U.S.C., sec. 1951 (the Hobbs Anti-Racketeering Act) or of section 302 of the Taft-Hartley Act (prohibiting unauthorized employer payment to employee representatives).

The Hobbs Act applies in terms to any person who obstructs commerce by robbery or extortion. In practice it has almost invariably been used against labor union representatives. Section 302 of the Taft-Hartley Act makes employers and employee representatives equally guilty of a crime when there is an unauthorized payment by the employer to the employee representative. But again in practice this statute has generally been used to prosecute union officials receiving unauthorized payments. My research of the reported decisions reveals only a handful of cases in which employers have been prosecuted under this statute.

In effect, then, the proposals made by Representative Cramer, and supported by the Attorney General, single out for special treatment from the whole vast

array of Federal criminal statutes two provisions peculiarly adapted for the prosecution of union officials and agents. For such special treatment it seems only proper that there should be special reasons. We have carefully examined those portions of the statements made on May 17 by the Attorney General and by Representative Cramer in support of Representative Cramer's proposals on granting immunity to witnesses in labor racketeering cases. We find no concrete facts or specific figures whatsoever to justify the conclusion that there is such a compelling problem in connection with prosecutions for violations of the Hobbs Act and section 302 of Taft-Hartley that these two criminal provisions must be singled out from all others for separate treatment. In view of the sensitive nature of any immunity legislation, as we have already indicated in our discussion of Representative Zelenko's more general immunity proposal, we think that the lack of any clearly demonstrated need should alone call for the rejection of this immunity proposal.

This leads to another, even more serious, objection to Representative Cramer's proposal. In actual operation it is going to be discriminatory against union officers and representatives. Let me explain just why we think this is so.

As the Attorney General in his May 17 statement before this subcommittee quite frankly explained, this particular immunity statute will be used to grant employers immunity against Taft-Hartley Act prosecutions in order to secure their testimony in prosecutions of labor representatives under the Hobbs Act. Now, to understand what this means we must examine carefully the difference between violations of the Hobbs Act and violations of section 302 of the Taft-Hartley Act. In each instance money may have passed from an employer to an employee representative. But in the Hobbs Act violation, the employer has parted with his property usually because he has been subjected to violence or threatened violence, or because he has been placed in fear, such as fear of economic loss. In the typical Taft-Hartley violation, on the other hand, the employer has made a payment which is more in the nature of a bribe. Clearly, the employer in the Hobbs Act situation is an innocent victim, while in the Taft-Hartley situation he is equally guilty with the union man. It further seems clear that no responsible U.S. attorney would subject an employer who has been victimized by a genuine Hobbs Act violation to prosecution for violating Taft-Hartley Act violation, the two offenses appear mutually exclusive.

How would this affect the operation of the proposed immunity statute? Imagine that a U.S. attorney is questioning an employer who has passed money to a union agent. The U.S. attorney suspects a Hobbs Act violation. But the employer refuses to talk. What does this mean? If there is a genuine Hobbs Act violation, the employer paid the money because of violence or fear. He is not subject to a Taft-Hartley prosecution, and he may freely testify without any worry under the law as it now stands. On the other hand, if the employer made an unauthorized payment without being subject to compulsion, he is equally guilty with the employee representative who received the money of committing a violation of the Taft-Hartley Act. To immunize him against prosecution in such a situation is to give favored treatment to one of two equally guilty parties. And as the Attorney General's explanation revealed, that favored party will invariably be the employer, even though the union representative is no more guilty than he.

A peculiarity of the Taft-Hartley Act violation should be pointed out. Usually, when immunity is granted to one of a number of guilty parties, as in a joint participation in a robbery, the immunity will be extended to an accomplice or accessory or to some other party who is obviously less guilty than the principal party against whom the testimony is sought. This would ordinarily not be so when section 302 of Taft-Hartley is involved. Here we have two parties, neither of whom is in a subordinate relationship, but both of whom are in a correlative position, one making and one receiving a forbidden payment. We submit that it is entirely unfair and discriminatory to single out the employer making the payment as the party to whom the cloak of immunity will be extended in order to obtain evidence against the union official who is not a whit more guilty. And as I have explained, this partiality cannot be justified on the ground that it serves to provide evidence of a more serious offense, namely, a Hobbs Act violation. By definition, the employer victimized by a true Hobbs Act violation should not fear that he himself will be prosecuted for a Taft-Hartley violation.

The Attorney General has insisted that there is a "gray area" where it is uncertain whether the violation is a Hobbs Act or a Taft-Hartley Act violation. He seems to believe that it is precisely here that the immunity statute is most necessary. We reply that it is precisely here that the immunity statute will be

most discriminatory in operation. Remember that it is the employer's mental state that is most crucial in determining which statute has been violated. Assume now that immunity has been extended to the employer and that he cannot refuse to testify. What is he going to say? True, he need not fear a criminal prosecution no matter what facts he recites. But obviously his reputation in the community, his standing with his business associates, and perhaps his job itself, may hinge on how he characterizes the transaction in which he passed money to the employee representative. Every conceivable factor of self-interest will spur him to color his account as best he can in order to show that he has not been guilty of bribery, but that he has been victimized through the compulsory tactics of a union agent.

In short, the employer clears himself of any wrongdoing under the Taft-Hartley Act only insofar as he implicates the employee representative in the more serious Hobbs Act violation.

It might be objected that even under the present law employers questioned about payments to union officials have an incentive to color their account so as to implicate the employee representative in a Hobbs Act violation. This may be true. But I am prepared to accept the Attorney General's statement that at the present time employers caught in a borderline situation prefer to keep quiet and say nothing. It seems to me that when employers, counseled as most businessmen are in such circumstances by well-qualified attorneys, choose to remain silent, the simple explanation is that they have every reason to believe they are guilty of a Taft-Hartley violation, and wish to discuss nothing which might hasten their conviction. I see no reason why they should be encouraged to convict a union representative of the crime of extortion in a situation where their own mental state may be the crucial factor—and where their own mental state leaves them with the impression that they may have been guilty of making a bribe.

Finally, I would like to remind this committee that on the basis of the very extensive hearing conducted by the Senate's McClellan committee, there was passed in 1959 the Labor-Management Reporting and Disclosure Act. I think it fair to say that Congress at that time felt this act adequately met any of the needs for antiracketeering legislation which may have been shown by the McClellan hearings. The act has now been in effect for less than 2 years. As one example of its many provisions regulating the standards of conduct of union representatives, let me mention section 504, which bars from any significant union position for 5 years persons convicted of any one of a wide range of crimes, including violations of the Hobbs Act. What has been the experience of the Justice Department in dealing with labor extortion since the date of the enactment of this provision? My opinion is that the impact of the Reporting and Disclosure Act as a whole, and such provisions as section 504 in particular, should be carefully assessed before any further legislation in this general area is considered. Certainly it seems reasonable to assume that provisions like section 504 will provide a considerable additional incentive to union officials and agents to avoid any possible involvement in the type of activities prohibited by the Hobbs Act. At least we should give the remedy provided by the new labor-management legislation a reasonable chance to work a cure before we consider resorting to the major surgery of an immunity statute.

In summation, we have found no factual documentation to support the sort of special immunity covering testimony in labor racketeering cases which would be provided by H.R. 3021 and title VII of H.R. 6009. Furthermore, this proposal would provide an incentive to employers to supply evidence to convict union agents of extortion under the Hobbs Act, even though under the present law an employer who has actually been victimized by a Hobbs Act violation need have no fear of a Taft-Hartley prosecution against himself, and even though the employer ordinarily will be reluctant to testify only when he is equally guilty along with the union representative of a Taft-Hartley Act violation. The AFL-CIO is therefore utterly opposed to the enactment of such unnecessary, discriminatory, and pernicious legislation.

The CHAIRMAN. Mr. Howard M. Holtzmann, representing the New York County Lawyers' Association, will be accompanied by Arnold Bauman, member of the committee on the criminal courts.

I would just like to make mention of the fact that accompanying Mr. Holtzmann is Mr. Licio Lagos of the Mexican bar. He is an official representative of his Government, on a mission here, to observe U.S. legal proceedings, and I would appreciate it if he would come to the table and sit here.

Mr. HOLTZMANN. Thank you very much, Mr. Chairman.

**STATEMENT OF HOWARD M. HOLTZMANN, NEW YORK COUNTY LAWYERS' ASSOCIATION; ACCOMPANIED BY ARNOLD BAUMAN, ESQ., COMMITTEE ON CRIMINAL COURTS, AND LICIO LAGOS, ESQ., REPRESENTATIVE OF MEXICAN BAR**

Mr. HOLTZMANN. Mr. Chairman, the New York County Lawyers' Association appreciates very much the invitation of this subcommittee to present its views on the various bills which you are considering to combat organized crime.

We are pleased to participate in this very important activity because we believe that vigorous and imaginative means must be worked out to combat the challenge of racketeering to our society.

The statement which I am privileged to make today represents the recommendations which were adopted by the association's committee on Federal legislation.

I think I should tell you that in deliberating on this matter, the committee on Federal legislation sought and obtained expert counsel from members of our criminal courts committee, because we felt that we needed the specialized experience that they would bring to the consideration of this matter. We have today accompanying me Mr. Arnold Bauman of the New York Bar, a member of the association's criminal courts committee, who met with the Federal legislative committee and who is extraordinarily well qualified to assist you in your deliberations. He at one time, was Chief of the Criminal Division of the U.S. Attorney's Office in the Southern District of New York. He was chief counsel for the U.S. Senate District Crime Committee here on the Hill. He was chief counsel for the New York State Joint Legislative Committee on Government Operations which considered criminal and other law enforcement matters. He began his career as an assistant district attorney in New York County, which is a very mild way of saying that he was one of Tom Dewey's very early crimebusters and one of Frank Hogan's most trusted assistants.

I might add, on the subject to which Mr. Woll was addressing himself, Mr. Bauman prosecuted for the Government, the first case to arise under section 302 of the Taft-Hartley Act.

The CHAIRMAN. We are very glad to have Mr. Bauman's views and his appearance here.

Mr. HOLTZMANN. If I may, I will respectfully submit our committee's recommendations with respect to the various areas of legislation on which we were requested to present our views.

The first area is the prohibition of interstate commerce and foreign travel in support of racketeering. That is the area that is represented by H.R. 6572, which you have been considering. That is

the bill, as you recall, which would prohibit travel across State and U.S. borders, in aid of racketeering enterprises. The bill defines racketeering enterprises as those involving gambling, liquor, narcotics, prostitution, bribery or extortion which are either Federal crimes or crimes in the State in which they are committed. The maximum penalty would be a \$10,000 fine and 5 years imprisonment. Such travel would be unlawful if undertaken for any of the following three purposes:

First, with intent to distribute the proceeds of any unlawful activity.

Second, to commit any crime of violence to further any unlawful activity.

Third, otherwise to promote, manage, establish, carry on, or facilitate any unlawful activity.

Now, let me say at the outset, we fully approve the basic aim of this proposed legislation. Insofar as it prohibits the travel of "bagmen" and messengers distributing the proceeds of crime, it should be adopted.

The second provision, which is aimed at the interstate and foreign travel of hired thugs and triggermen, is equally sound.

However, I must tell you that we do raise certain questions concerning the third provision because we fear that it may be vague and it may be ill defined, that it might reach acts which do not involve racketeering, and might subject perpetrators of relatively minor unlawful acts to inappropriately heavy punishment. I recall to your minds, this bill proposes a \$10,000 fine and 5 years of imprisonment.

Thus, for example, an individual who left the District of Columbia and went over in Maryland to—in the words of the statute—"facilitate" a prostitute who was plying her trade as an individual entrepreneur might find himself subject to the penalties of this act.

The CHAIRMAN. We raised that very question at the first day of this hearing.

Mr. HOLTZMANN. In addition to that, we feel the use of the term "business enterprise" in the bill's definition of "unlawful activity" introduces a concept that would complicate enforcement and judicial construction.

In summary, we recommend that the bill not be approved in its present form but that a measure to accomplish its highly desirable purpose should be drafted in accordance with the comments which I have just made.

Mr. FOLEY. There is a point that bothers me, too.

Going back to the distribution of proceeds of any unlawful activity, I have no worry if you have some physical object that you can identify, but referring to "bagmen," don't you think you have a pretty difficult question of proof here, to show that if one carried \$10,000 across the line, that it specifically came from a gambling activity?

Mr. HOLTZMANN. I would like to throw that one to Mr. Bauman, if I may.

Mr. FOLEY. I am asking it of him.

Mr. BAUMAN. In the enforcement of the criminal law, one often encounters serious questions of proof. I have always felt that one good tip is more advantageous than a lot of original investigation.

You raise a question of proof, but it is perfectly possible, as you know, in these cases, to persuade a reluctant witness such as an ac-

complice to testify. Without that kind of help, it would be difficult but not impossible to prove. It is possible to develop a case based upon circumstantial evidence and I do not think—if I may reply to you in this way—that you are posing any insurmountable problem.

Mr. FOLEY. Don't you admit you have to identify the money as the proceeds of gambling?

Mr. BAUMAN. Yes, indeed.

Mr. FOLEY. And I mean, you just could not lump it together.

Mr. BAUMAN. Could you not do it by having an accomplice say that this was in fact the money that was picked up in a policy room?

Mr. FOLEY. That is what you have to have.

Mr. BAUMAN. Pretty much.

Mr. FOLEY. I have no worry where you have that. I am thinking of where you might not have it.

Mr. CRAMER. May I ask one question?

The CHAIRMAN. Go ahead.

Mr. CRAMER. Are you familiar with title II of 6909, the omnibus bill which I introduced, relating to the same subject matter but using a different definition; that of syndicated criminal activity rather than unlawful activity in which the section, the paragraph, you object to reads—this is subparagraph 3 of the bill introduced by the chairman—

\*\*\* otherwise promote, manage, establish, carry on—  
or as you raise the question—

facilitate the promotion, management, establishment, or carry on of any syndicated criminal activity.

The definition of "syndicated criminal activity" is—

Any substantial, concerted activity in or affecting interstate or foreign commerce where any part of such activity involves violations of law, Federal or non-Federal.

Perhaps that definition needs some perfection.

Do you think that approach is preferable?

Mr. HOLTZMANN. We have had no opportunity to consider it. I think it certainly goes a long way in the direction in which we are aiming. Whether it gets all the way or not, I really could not say, without a full study of the statute.

Mr. CRAMER. There is a similar type of definition used in the anti-trust laws, of course, which you are familiar with.

Mr. HOLTZMANN. I think, sir, it goes—

Mr. BAUMAN. I would merely say that I would think that the association, insofar as this word "facilitate" is used, would find it a rather undesirable one.

Mr. CRAMER. I said, excluding that.

Mr. BAUMAN. Excluding facilitate?

Mr. CRAMER. You think that would be preferable?

Mr. BAUMAN. I certainly think it would be preferable. Whether it would be a complete solution or not, I am really not prepared to say.

Mr. HOLTZMANN. If I may pass on to the second general subject matter which we considered. That is the bills relating to the prohibition of interstate use of wire communications for betting. We con-

sidered three pending bills dealing with this matter. Those were H.R. 3022, H.R. 6573, and H.R. 7039.

Of those three bills, we believe that H.R. 7039 is the preferable bill but we recommend that it not be adopted in its present form. This bill provides that those who lease, furnish, or maintain any wire communication facility with the intent that it be used to transmit bets or wagering information across State lines are guilty of a crime punishable by a maximum penalty of \$10,000 and 2 years imprisonment. This we favor because we recognize that betting activities are a major source of the income by which organized crime is financed. We also favor a wise provision in the bill which makes clear that it is not intended to cover use of wire facilities in news reporting of sports events. However, we disapprove a clause in proposed section 1084(a) which covers those who "knowingly use" wire facilities in wagering, because we believe that this clause might be interpreted to make the strong penalties of the bill apply to a casual bettor who placed a wager by means of an interstate telephone call. We suggest that this clause be redrafted so that its scope is limited to the professional racketeer engaged in interstate gambling operations.

H.R. 6573 is very similar to H.R. 7039. A principal difference is that it does not contain the provision which specifies that the measure is not intended to cover the use of wire facilities in news reporting of sports events. For that reason, we feel that H.R. 6573 is less desirable than H.R. 7039.

We disapprove of H.R. 3022. We feel that its provisions with respect to affidavits relating to future intent are both unrealistic and unenforceable. Further, the provision which makes it a crime for an installer of communications equipment to fail to report to the Department of Justice if he "has reason to believe" that the equipment may be used in betting, imposes an undue burden on workmen who may be ill qualified to make the determinations required of them by the proposed bill and who might be unreasonably penalized in the event of honest error.

The CHAIRMAN. Any workman who sees a large number of telephones being installed, and no business seems to be transacted, would certainly be suspicious, and report that to his employer.

Mr. HOLTSMANN. We are inclined to feel, sir, that in many situations, the individual workman coming into a place to install telephones, perhaps before it is occupied for business, might really not be equipped to make the kind of judgments here that should subject him personally to a very severe penalty.

The CHAIRMAN. Then he returns to make adjustments in the lines—the position of the telephone equipment. He, or someone else; and sees some other people operating, and he may even hear what is going on.

Mr. HOLTSMANN. Well, we are inclined to think it may be different in the case of a telegraph company, where the message is seen by an employee of the telegraph company who handles the message for transmission purposes, but in terms of the telephone installer, we are inclined to feel that the penalty may be a little bit too great on him. Perhaps there should be a penalty on him but we think 2 years in Federal prison is too severe. I think that Mr. Bauman may have a comment.

Mr. BAUMAN. I merely want to say that your two examples are very good. In the second case, where a man walks in and he hears bets being taken we have no problem. We are not concerned about that situation. In the first case, a man comes in to install two telephones, and there are already six wires in the room, assume that there is to the sophisticated law enforcement official no sign of legitimate business activity. First of all, it may not be inconsistent with innocence and I don't think that a man who is devoting his life to the installation of telephone equipment ought to be required at his peril, to determine whether or not there are suspicious circumstances.

Mr. PEET. Mr. Holtzmann, aren't there, as a matter of fact, many criminal statutes which are broader in their coverage than in their enforcement, and that the enforcement is left up, in large measure, to the discretion of the Attorney General in particular violations—for particular violations.

Mr. HOLTZMANN. Yes, I think that is true. That is something on which Mr. Bauman, as a law enforcement officer for many years, could perhaps better comment on.

On the other hand, I do think that from the point of view of the general lawyer, that that is an unfortunate fact.

Mr. BAUMAN. The thing that distressed me a little about the previous witness' testimony was that it ignores a fact of prosecutive life. That is, every day the prosecutor makes prosecutive decisions as to whether or not certain violations of law shall be prosecuted or shall not be prosecuted. In a busy district like the southern district of New York the calendar is already in a very serious condition. It would be absolutely unmanageable if every violation of every law were to be prosecuted.

The prosecutor has discretion. A good prosecutor uses this discretion with wisdom and courage. I do not think that a dangerously worded statute should be passed in the hope that prosecutors will administer it wisely.

Mr. CRAMER. Morally, don't you think the employee who has such information should have a duty to report it to the law enforcement authorities?

Mr. BAUMAN. Yes.

Mr. CRAMER. Have you any suggestion as to how that could be accomplished, or how this question you raised could be avoided, acknowledging the legislative, the good legislative objective?

Mr. BAUMAN. I don't offhand. I will be happy to consider it if you like, and write you about it.

Mr. CRAMER. I think that would be very helpful, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. PEET. On this point, if I may make one observation concerning the witness from Western Union this morning. If I am not mistaken, he said that, so far as he recalled, there had never been any disciplinary action against any Western Union employee.

Mr. CRAMER. The telephone people said they fired people for this.

Mr. BAUMAN. As I have said, I think that any citizen who has knowledge of this kind of illegal activity is under a duty to report it to the appropriate authorities. This is not a game we are playing with organized crime.

Mr. PEET. Should the standard of duty imposed be any higher, do you believe, where an individual is employed at a public utility and has perhaps peculiar knowledge of the situation?

Mr. BAUMAN. I would think his duty is not essentially different than that of any other citizen.

Mr. HOLTZMAN. Particularly at the lower echelons, where he may be untrained for the fulfillment of the duty, or training in that type of detection is not part of the normal training for his job.

Now if I may move on to the third general area of consideration. We studied the bills relating to prohibition of interstate shipment of gambling materials which the committee has before it. Two bills in this connection were considered. H.R. 3246 and H.R. 6571.

H.R. 6571, you will recall, provides a maximum penalty of \$10,000 and 5 years imprisonment for knowingly shipping across State lines any record, paraphernalia, ticket, paper, slip, or similar devices "used, or to be used, adopted, devised, or designed for use" in gambling activities.

We fully approve the purpose of that bill but we recommend that it be redrafted prior to enactment so as to make evil purpose on the part of the shipper a necessary element of the offense.

Here is what we had in mind. You might have a case of a supplier of paper blanks suitable for use in a variety of enterprises, who might unwittingly ship them to a gambling operator.

Mr. FOLEY. In an actual case of the pads which waitresses use in a restaurant. People in the numbers racket use them all the time, and the big number operators buy them by the carton.

Mr. HOLTZMANN. Another example which occurs to us is where a supplier might ship into a State materials which could be lawfully used in the State in which it is received. The State of Nevada occurs to all our minds immediately because the definition of illegal gambling varies from State to State.

We think that it should be made clear in the statute that the bill would not cover the innocent shipper, but would only apply to those who ship with an intent that the material shipped would be used in violation of the law of the State into which it is sent.

H.R. 3246 is intended to cover much the same ground as H.R. 6571. H.R. 3246, in our view, should not be enacted because it defines the scope of the offense less precisely than H.R. 6571. Furthermore, the bill, at the very outset, omits the requirements that he who ships or carries shall do so "knowingly." We think that omission may raise a question concerning the constitutionality of the bill.

Mr. PEET. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. PEET. In title 6 of H.R. 6909, "knowingly" is inserted again, in that provision. As filed initially, it was left out.

Mr. HOLTZMANN. Thank you.

The fourth general area which we studied was the area of immunity for certain witnesses in labor management racketeering cases. In that area, we recommend passage of H.R. 3021, under which immunity could be granted to witnesses who testify in cases involving extortions, prohibited by the Hobbs Act or gifts to representatives of employees outlawed by the Taft-Hartley Act.

We believe that granting immunity in certain instances is necessary for the effective enforcement of these two statutes. I might add,

we particularly favor the procedural safeguards established by the bill which provide that immunity will only be granted in cases specifically approved by both the Attorney General and the court.

Mr. CRAMER. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. CRAMER. You heard the testimony, did you not, of Mr. Woll, on behalf of the AFL-CIO? Would you or the gentleman with you care to enlighten the committee on your reaction to that testimony, specifically as it relates to the interrelationship between the two, in the question of intent in one case as compared to the other?

Mr. HOLTZMANN. I would like to ask Mr. Bauman to comment.

Mr. BAUMAN. I differ very strongly with the previous witness. I don't regard anything in this bill as being discriminatory against labor.

Mr. Holtzmann has told you that I tried the first case to be tried under this section of the Taft-Hartley law. That case involved a man by the name of Joseph P. Ryan, president of the International Longshoremen's Association, and, I might add, when I was talking about prosecutive discretion a moment ago, I had this case in mind.

Under the Taft-Hartley law, both the giver and the receiver are guilt. As a practical matter, how does the prosecutor prove his case? He must get one to testify against the other. He cannot indict both and expect cooperation. This is the problem I resolved in the *Ryan* case by having the giver testify.

The prosecutive official makes such decisions every day of the week. It may well be that in another case the interests of justice might dictate the prosecution of an employer. I feel that this proposed statute is a very good one because, no longer being in Government office, I now find myself representing employers who are subpoenaed before grand juries. They are asked whether they have made gifts or paid any moneys to representatives of employees.

Mr. CRAMER. Under the Taft-Hartley provision?

Mr. BAUMAN. Yes.

How can a lawyer advise such an employer other than to invoke the fifth amendment, when, under the statute, he is guilty if he appears before a grand jury and says, "Yes; I paid the money." This proposed statute would enable the U.S. attorney, with the approval of the court, to make such a person testify and would permit him to testify freely.

I was not very much impressed with Mr. Woll's statement about the psychological effect of H.R. 3021 for this reason: Whether or not you have an immunity statute, the man who is testifying against somebody will always want to present the best possible public appearance. Whether or not he receives immunity he will not say in substance: "Yes; I seduced this labor representative into taking money." He will always say: "Why, he practically forced me. I had no alternative but to do it."

Mr. CRAMER. In your experience, do you agree with the Attorney General's position that this is essential and needed legislation?

Mr. BAUMAN. I certainly do. I know, when there was some discussion this morning about Mr. Rogers' statement to the effect that in many cases the Department of Justice was frustrated in the administration of these laws, Mr. Holtzmann said to me, as we were seated, "Can you give any examples?" "Well," I said, "I have no figures," but having served 2½ years as Chief of the Criminal Division in the

southern district of New York, I know that day after day, you run into the problem that lawyers tell their clients, "You may not testify about these things without jeopardizing yourself" as I would myself if called upon for such advice.

I think the statement of Attorney General Rogers which you read to the previous witness was altogether proper and altogether justified, sir.

Mr. TOLL. May I inquire, Mr. Chairman, in how many criminal areas is immunity now permitted?

Mr. BAUMAN. I once made that computation, sir. My best recollection—it is not a very good recollection—would be somewhere close to 20 Federal statutes.

Mr. FOLEY. That is about right.

Mr. TOLL. Twenty Federal crimes?

Mr. FOLEY. No. Not crimes.

Mr. BAUMAN. Yes. Yes. That is the only time you get immunity.

Mr. FOLEY. I am thinking for instance, of a Securities and Exchange inquiry.

Mr. BAUMAN. You are absolutely right, Mr. Foley. I understood the question to be in the investigation of how many crimes are there immunity statutes, and the answer is that there are about 20 specific statutes attached to other statutes, which permit granting of immunity.

Mr. TOLL. How many criminal statutes are there in the Criminal Code?

Mr. BAUMAN. I have not the slightest idea.

Mr. TOLL. Can I inquire? You are an expert on Federal law.

Mr. BAUMAN. I make no claim to being an expert, sir.

Mr. TOLL. You may also be familiar with common law in the criminal field.

How many immunity statutes prevail under the criminal law in the common-law field?

Mr. BAUMAN. I am only familiar with the immunity laws in my own State of New York; and I cannot answer you beyond that.

In New York, sir, there is the procedure where the district attorney may make application to the grand jury and the grand jury may grant immunity in almost any case. They are limited, but the limitations are so broad as to permit a district attorney in New York State to grant immunity in a huge array of criminal cases—by far the overwhelming majority.

Mr. FOLEY. Actually, today, Mr. Toll, the only two places you will find the grant of immunity coming out of a criminal case is 3482, of title 18, which specifies crimes involving national security. That is a 1954 act.

Mr. BAUMAN. Passed upon in the *Ulmann* case.

Mr. FOLEY. And also in the Narcotics Control Act of 1956, section 1406 of title 18, passed on in the *Reina* case. That is specific also.

Mr. HOLTZMAN. If I may proceed to the next area.

Mr. CRAMER. One additional question.

Do you disagree with Mr. Woll's analysis and conclusion on the question of the employers', as he stated, tendency to try to get the employee under the Hobbs Act by saying that he was forced into it, or intimidated, rather than under the Taft-Hartley Act, and do you agree with his conclusion that every conceivable factor of self-interest will spur him to color his act, as best he can, in order to show he has not

been guilty of bribery but he was victimized by the conspiracy and the compulsory activity of the agent?

Mr. BAUMAN. I say, if a man is going to lie in his self-interest, whether we have this section or not, he will want to appear in the best possible public light, and while it is possible that a witness may say, sir, that he made me do wrong, rather than that I made him to do wrong, I disagree with Mr. Woll when he says that this statute will encourage such a result. I don't think it will.

Mr. HOLTZMAN. It results inherently in human nature, anyway.

If I may pass on to the bills relating to the extension of the Fugitive Felon Act.

The Fugitive Felon Act today covers only the specifically designated crimes of murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, arson, and extortion.

There are two identical bills, H.R. 468 and H.R. 3023, which we considered. Both of them would extend the present statute to cover all crimes punishable by more than 1 year's imprisonment under the laws of the place whence the fugitive flees.

We disapprove both bills because the definition of the crimes covered is far too broad. Offenses which are traditionally subject to State law should not be made the basis of Federal prosecution on an omnibus basis.

While we do not oppose broadening the Fugitive Felon Act to include specific additional crimes related to organized racketeering, we cannot approve the shotgun approach of the present proposal.

The next area which we considered was the matter of immunity for witnesses in any matters affecting interstate commerce.

As Mr. Woll pointed out in his testimony, the traditional statutory policy has been to grant immunity only in specific types of cases. H.R. 3021, which we approved, is typical of that approach.

H.R. 1246, however, would grant immunity in cases involving "any matter which affects interstate or foreign commerce or the free flow thereof," without any specification whatsoever.

We recognize that granting immunity in certain classes of cases relating to organized crime might be a helpful adjunct to law enforcement. However, this should be accomplished in a statute which follows the time-tested method of specifying the particular crimes to be covered. The breadth, scope, and reach of H.R. 1246 stagger the imagination of lawyers who considered it. We feel that this all-pervasive, all-enfolding blanket proposal should not be enacted.

The final area which we considered is represented by H.R. 5230, and it is the prohibition of conspiracies to commit organized crime. That bill seeks primarily to establish a constitutional footing for Federal prosecution of a variety of serious local offenses related to organized crime.

The purpose of the bill is a salutary one in attempting to provide needed assistance for local law enforcement. The objective of the bill presents a formidable problem in legislative drafting with which the proposed text fails to cope. For example, literal interpretation of one provision of the bill would give extraterritorial effect to the criminal codes and common law of all 50 States regardless of the place crime was committed.

We recommend that H.R. 5230 not be enacted because of its ill-defined scope and generally deficient draftsmanship.

The CHAIRMAN. Thank you very much. Any questions?

Mr. TOLL. No questions.

Mr. HOLTZMAN. Mr. Chairman, if I might make one further communication to you.

The CHAIRMAN. You may.

Mr. HOLTZMAN. At the request of the representatives of the Brooklyn Bar Association, I would like to submit for the record their statement with respect to the fact that under the rules of the Brooklyn Bar Association it would not have been possible for them, within the time permitted, to submit a report to this committee.

Their statement, which I can submit for them, contains their suggestion in this regard for future proceedings.

The CHAIRMAN. The statement will be accepted for the record.

(The statement supplied follows:)

MAY 26, 1961.

HON. EMANUEL CELLER,  
*Chairman, House Judiciary Committee,*  
*Washington, D.C.:*

Mr. Chairman and members of the committee, we should like to extend our appreciation, and that of the Brooklyn Bar Association, for having been afforded the opportunity, both this year and last, to present our views with respect to matters of Federal legislation before the House Judiciary Committee.

We are highly gratified that this committee has seen fit to once again seek the views of the Brooklyn Bar Association with reference to these 10 important matters. Therefore, the inability of the Brooklyn Bar Association to present its views because of the late date of the request and the early date of the hearings, is a source of deep concern to us. It should be noted that our association did not receive your request for our opinions concerning these 10 bills until May 10, 1961, approximately 1 week before the association was scheduled to present its studies of these bills to your committee.

Not only would it have been impossible to adequately consider these bills within such a short time in order to make our opinions worthwhile, but it would be objectively impossible to present the views of the committees to the Brooklyn Bar Association as a whole since it could not have met in time and will not now meet until this coming fall. Under the rules of our association, a presentation to the bar as a whole is mandatory.

However, although the Brooklyn Bar Association cannot take any position on the merits of these 10 proposed bills, the president of the association, Raymond Reisler, and the board of trustees have, nevertheless, requested us to make our views known concerning the general subject matter of our desire to be of qualitative assistance to the House Judiciary Committee.

We are particularly concerned with respect to these matters since our bar association is extremely desirous of expressing its views concerning the passage of important legislation. If these bills are meritorious, then it is indeed unfortunate that we have not had an opportunity to support their passage. It is patently obvious that the control of organized crime is one of the major domestic problems facing the country.

We are additionally concerned that we cannot present our views for the reason that 3 of the 10 bills are proposed by the chairman who is, himself, a member of the Brooklyn Bar Association, and a distinguished Representative from the Borough of Brooklyn.

The pooled intellectual resources of the committees involved, from which your committee has sought an opinion, constitute a source of experience and judgment which may well be of advantage to this committee, and to the country as a whole. The inability to respond, therefore, by reason of the lateness of the request and the early date of the hearings, is a source of deep disappointment, which we are extremely desirous of avoiding in the future.

We respectfully request, Mr. Chairman, two things:

First: If these bills are neither passed nor rejected before Congress adjourns, it is desired that we have an opportunity to submit our views at some future time when these bills and our views may again be considered;

Second: That as a matter of committee policy, the views of the Brooklyn Bar Association, if desired, be sought well in advance of any hearing dates,

so that a study may be well considered and presented to the bar association as a whole for its approval and recommendation.

It is too late in the day to advance as original the principle that legislation such as proposed here should be carefully considered by all concerned. It is never too late, however, to suggest ways in which this principle may be implemented, and early notice to the bar associations is, we believe, just such a method.

Respectfully submitted.

WILLIAM W. KLEINMAN,  
*Chairman, Committee on Criminal Law and Procedure, Brooklyn Bar Association.*

ROBERT A. MORSE,  
*Chairman, Committee on Federal Legislation, Brooklyn Bar Association.*

Mr. PEET. Mr. Bauman, I have a question I would like to address to you.

The Internal Revenue Code provides that gamblers must register for payment of a special gambling tax. As a matter of practical law enforcement, is this registration of use to law enforcement authorities?

Mr. BAUMAN. I will be happy to give you a personal opinion based on my experience in my district. May I qualify this by saying I come from an unusually large and busy district and the Federal courts, as you gentlemen well know, in the southern district of New York, are extraordinarily crowded. Therefore, some of my reasoning might not be applicable to jurisdictions other than my own.

With that preface, I am going to say we have had, in my time in the U.S. attorneys office and thereafter, a number—a relative small number—of prosecutions under this act. Speaking for myself, I think it fair to say that the people in the Federal courthouse, at Foley Square, generally feel that the business of prosecuting a bookmaker is better left to the court of special sessions—a New York City court.

I do not feel that the Federal court, with its much more serious criminal litigation, ought to be punishing bookmakers for bookmaking when the State courts are well qualified, able, and have the manpower to do so. To answer your question as directly as I can, I have never found it a very helpful tool in the administration of the criminal law. I have never been favorably impressed with it. As a matter of fact, having to dispose of cases coming in at the rate of 100 a month, as I did, when I was in that office, I found myself very often annoyed that these matters which should have been handled in the court of special sessions were taking the time of Federal judges.

Mr. PEET. As a matter of fact, you have supported H.R. 7039 in the statements you made here today.

Mr. BAUMAN. Yes; subject to certain suggested changes.

Mr. PEET. Would that not, in effect, put the Federal courts in the business of prosecuting bookmakers?

Mr. BAUMAN. No. The difference between these bills we supported and this gamblers tax law about which you have asked me differ in my mind and, I believe, in the mind of the association.

What you are seeking to do here is to prosecute organized crime. What the Attorney General is trying to do in these bills, is to provide tools to reach the top level or such level that will enable you to get to the top level.

The difference between these bills and the gamblers tax law is that the gamblers tax law causes the arrest of a bookmaker taking bets, a low-level person, through whom you will never get to the top echelons in the hierarchy of organized crime.

I find for that reason, it is a wasteful procedure, federally speaking.

Mr. PEET. As a matter of fact, has not the method of going after organized crime to date, in the last 20 years, been through the use of indirect means, such as income tax evasion, when you cannot get them for the commission of the various and sundry substantive offenses which they might be guilty of? Could not this Special Registration Gambling Act be used to go after individuals who procedurally did not register, despite the fact they engaged in gambling activities?

Mr. BAUMAN. It is an indirect and useful tool in the administration of criminal law.

You know, another problem that we have in this gambling tax law is that it is administered by the Treasury Department. I don't know of any Federal law enforcement agency—the Treasury Department, the Justice Department—any, that has an adequate staff to take on the mass enforcement of the type of crimes that the State prosecutors prosecute.

It may well be that if the Department of Justice feels that it can get a top-level racketeer by the use of this gamblers tax law, it could serve a salutary purpose. I have not seen it so used in my jurisdiction. In practice, I have observed that the defendants who come into the Federal court in violation of this Federal statute are the same ones picked up by the New York City police, which department has 23,000 men and they are prosecuted for exactly the same thing I used to prosecute in the court of special sessions, when I was a young assistant district attorney there.

Mr. CRAMER. You say now, that the registration statute is the major outcome and outflow of the Kefauver crime hearing.

Mr. BAUMAN. Unfortunately so.

Mr. CRAMER. In the early 1950's, this was supposed to be the answer to the racketeering problem and the gambling problem and the organized crime problem. It just does not do the job, does it?

Mr. BAUMAN. That is precisely what I am saying.

Mr. CRAMER. That indicates the need for legislation in this field today, does it not?

Mr. BAUMAN. Legislation that will attack and get to the leaders of organized crime.

Mr. CRAMER. Right. Right.

The CHAIRMAN. On that point, Mr. Bauman, I would like to make this observation. Getting to the leaders is fine. Don't you think that we could be making a serious mistake when we begin to rely too heavily on Federal Government, Federal enforcement agencies, where there is the ability in the local law enforcement agencies to prosecute and handle these situations, and that there might be a tendency on the part of the local law enforcement agencies to break down?

It has been indicated in many avenues.

Mr. BAUMAN. I could not agree with your statement more, Mr. Chairman. I think that is absolutely right.

For one thing, I rather doubt even in these \$83-billion-budget days in which we are living today, that the Congress could provide enough money to take on the day-to-day, low-level law enforcement which is properly and, generally, fairly well done by local communities.

What I think should be done, is in effect, what the Attorney General is seeking to do here—to bring the full force of Federal Government to bear on people who may be above the local law, and in that manner,

I must say I thoroughly associate myself with whatever he is trying to do, and that which Attorney General Rogers tried to do before him.

There is no question in my mind that is a good approach—a right approach. It would be a serious mistake, gentlemen to disperse your efforts in law enforcement by attempting to take on the local range.

The CHAIRMAN. If this is just to get to the small fry, the little book-makers, all these other little people, instead of the kingpins, then we make a serious mistake?

Mr. BAUMAN. I agree with that, sir.

Mr. CRAMER. May I ask one other question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. CRAMER. I agree wholeheartedly with that basic concept. Would it not be most helpful if the Federal Government would disseminate information on these interstate racketeers to the local law enforcement authorities through a properly supervised office in the Department of Justice, as proposed in title I of 6909—an office of syndicated crime. Presently, for such information as gambling stamp registration information, for instance—you have to go to the local office where it is recorded to get it. In other words, if a man in California registers, then comes to New York, you have to go to California to get the information.

Would not a properly supervised, disseminating and coordinating agency or office, within the Justice Department, under the control and supervision of the Attorney General, to carry out the objectives of this act to fight organized crime, that would be its limitation, help local law enforcement officials as much as anything they could do?

Mr. BAUMAN. I think that would be tremendously helpful. One other thing. I think Mr. Rogers tried to do it. I think Mr. Kennedy is trying to do it now. That, I have always felt, is vital in law enforcement. I realize I am getting away from the specific bills. It may interest you to know that when I was in the Department I discussed this with Mr. Rogers, then Deputy Attorney General. I feel that the Federal Government, if it is to succeed in getting at the bigwigs and the kingpins, has got to get away from the jurisdictional lines of the investigative agencies as much as possible. I know that Mr. Kennedy and Mr. Rogers both have attempted to put together teams of people from all of the various services to eliminate these agonizing jurisdictional limitations.

I tried to do something like that myself in a small way in the south-eastern district of New York. We had somebody from Customs on the team; somebody from Narcotics; somebody from Internal Revenue and the FBI. We tried to put together a team of topnotch people so that we would not be frustrated by these limitations of jurisdiction.

I think that, with the proposal to which you just referred—a coordinated attack bringing to bear on these racketeers the full power of the Federal Government is the only answer to it.

Mr. CRAMER. How else can that be accomplished unless by legislation? We instruct these departments to cooperate with the Attorney General under specific limitations. In other words, if they don't want to, they don't have to, under present circumstances. Isn't that correct?

Mr. BAUMAN. Absolutely. And in practice, they very often don't.

Mr. CRAMER. That is right. So, in order to make it possible for this information to be correlated and thus properly disseminated under strict supervision and proper regulations, legislative authority would be necessary.

Mr. BAUMAN. Absolutely.

Mr. CRAMER. Were you familiar with the—did you work with the Wessel group that was appointed by the Attorney General?

Mr. BAUMAN. I am familiar with it. Milton Wessel was one of my assistants when I was Chief of the Criminal Division in the U.S. Attorney's Office.

Mr. CRAMER. He was one of my classmates in law school.

Mr. BAUMAN. I saw him the other night at the annual dinner we had for Judge Lombard.

Mr. CRAMER. You are familiar with the report that he made to the Attorney General, are you not?

Mr. BAUMAN. No, I am not. I did read very carefully, the opinion of the court of appeals in reversing that conviction. I am not familiar with the report.

Mr. CRAMER. And the study he made on that same subject, of how we can get at organized crime at the national level?

Mr. BAUMAN. I am not familiar with that report, sir.

The CHAIRMAN. Thank you very much, Mr. Holtzmann and Mr. Bauman. We are very glad to have had you with us today.

This will adjourn the hearing for today. We will reconvene Wednesday, May 31, at 10:30, when we will hear further from Assistant Attorney General Miller.

(Thereupon, at 12:50 p.m., the committee adjourned until Wednesday, May 31, 1961, at 10:30 a.m.)

# LEGISLATION RELATING TO ORGANIZED CRIME

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WEDNESDAY, MAY 31, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE No. 5 OF THE  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Members present: Representatives Celler (chairman of the subcommittee) Rogers, Toll, and McCulloch.

Also present: Representative William C. Cramer; William R. Foley, general counsel; Richard C. Peet and William H. Crabtree, associate counsel.

The CHAIRMAN. The committee will come to order.

The first witness this morning on the hearing of these various crime bills is the distinguished Assistant Attorney General, Criminal Division of the Department of Justice, Hon. Herbert John Miller, Jr.

Mr. Miller, we will be glad to hear from you.

## STATEMENT OF HERBERT J. MILLER, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. MILLER. Thank you, Mr. Chairman.

My name is Herbert J. Miller and I am the Assistant Attorney General in charge of the Criminal Division of the Department of Justice. I am here today as the second witness of the Department in support of the several proposals submitted to Congress by the Department in a renewed and comprehensive effort to combat the forces of organized crime.

During his testimony on May 17, the Attorney General documented the need for legislation to restrict the use of interstate commerce and interstate communications facilities by organized syndicates in furtherance of their unlawful activities. Earlier testimony before this subcommittee on behalf of local law enforcement officers has emphasized once again that such Federal legislation is needed to assist the States and communities in effectively exercising their traditional law enforcement responsibilities.

In my prepared statement today I wish to concentrate on three of the proposed bills dealing with interstate travel, interstate transportation of wagering paraphernalia, and interstate transmission of gambling information. I shall restate the goals of these bills and answer some of the criticisms expressed during these hearings.

H.R. 6572, introduced by you, Mr. Chairman, embodies our proposal dealing with interstate and foreign travel.

The aim of this bill is to bolster local law enforcement authorities by denying access to interstate facilities to persons engaged in illegal gambling, liquor, narcotics, or prostitution business enterprises. As graphically demonstrated by the examples given by the Attorney General in his testimony, the complex operations of today's organized criminal hierarchies recognize no State boundaries. In the Department's view, passage of H.R. 6572 will disrupt the farflung operations of these criminal organizations by making it impossible for organized gambling and other illegal activities to operate on a national or multi-state scale extending beyond the reach of local and State enforcement agencies.

In order to fully safeguard the rights of law-abiding American citizens who travel across State lines for business or pleasure, H.R. 6572 is drafted to strike only at interstate travel in connection with certain unlawful activities. The bill therefore prohibits intentional travel by a person (1) to distribute the proceeds of any unlawful activity, (2) to commit any crime of violence to further that activity, and (3) to otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of the unlawful activity. Moreover, the term "unlawful activity" is defined to mean "any business enterprise" involving illegal gambling, liquor, narcotics, or prostitution offenses, or illegal extortion or bribery. The use of the term "business enterprise" limits the application of this section to a continuous and organized course of conduct in these activities, and therefore, exempts casual or occasional travel which is not directly related to such a "business enterprise."

The Department of Justice believes that H.R. 6572 defines the illegal conduct with the necessary clarity and specificity. Because of the proven ingenuity of the professional criminal in avoiding statutory provisions designed to limit his activities, subsection (a) (3) is drafted to proscribe interstate or foreign travel with the intent to—

otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.

As drafted, the bill includes any activities that would advance the interests of the individuals or groups engaged in the continuous course of illegal conduct. In each and every instance, there must be proof of the "unlawful activity" as defined under subsection (b).

It can hardly be contended that the average American citizen does not know if he is engaged, for example, in "any business enterprise involving gambling, liquor, narcotics, or prostitution offenses" under State or Federal law. H.R. 6572 bans unlawful businesses—not incidental illegal acts done in the course of lawful businesses. Since the bill in addition would require proof of the requisite intent before a violation would be made out, I believe that the scope of H.R. 6572 in no way threatens the activities or rights of any persons other than the organized criminals at whom it is aimed.

For the same basic reason I do not believe that H.R. 6572 can be properly criticized as a "thought control" proposal because of its emphasis on the intent of the person traveling in interstate or foreign commerce. Intent is a key element of proof in most of our criminal statutes. As with these other statutes, successful prosecution under the proposed bill would require proof of the defined intent by refer-

ence to some overt conduct. Under H.R. 6572, the Government would have to link the interstate travel with the furtherance of the specified unlawful activity in such a way as to prove that the defendant was traveling with the requisite intent. Far from being a "thought control" bill, H.R. 6572 requires an imposing burden of proof before the sanctions of the bill would apply.

Mr. Chairman, I would like to interject at this point. You made a statement at the beginning of these hearings which was as follows:

Any proposal which extends Federal criminal jurisdiction is of the utmost importance to each and every one of us, and therefore commands from us as legislators a vigilant and diligent attitude of study and reflection.

I would like the committee to know that I have gone through the various hearings that have been held—transcripts of these hearings—and I find that they are extremely helpful.

I am a neophyte in the job I have now, but I find that the testimony and the various issues raised demonstrate the "why" of congressional hearings.

I think the hearings themselves have been very helpful.

Rather than continue with my statement at this time, it perhaps would be better if the chairman feels it desirable, to consider the travel bill and any questions that the committee might have on it.

The CHAIRMAN. As you know, we were concerned with the possibilities that some of the words used in the provisions of the statute might be deemed so vague as to violate due process and that is why a great many questions were asked concerning these words.

Counsel has just asked a question.

Mr. FOLEY. Mr. Miller, at the very outset of the hearings, regarding the provisions in this bill, H.R. 6572, interrogation was made regarding the use of the words, on page 2, line 3, subsection 3, "otherwise promote."

Do you have any qualms about the use of the words, "otherwise promote" as being too broad or too vague or too indefinite?

Mr. MILLER. Mr. Foley, the statute reads:

(a) Whoever travels in interstate or foreign commerce with intent to \* \* \*—and then there are the words—

- (1) distribute the proceeds of any unlawful activity; or
- (2) commit any crime of violence to further any unlawful activity.

Now, in each of these instances, the distribution of the proceeds and the commission of a crime of violence are tied to the furthering of the unlawful activity as defined in the bill.

Now, the word "otherwise" was a lead-in statement, if you will, to the paragraph 3, and if it is read in that context, I don't believe that you would consider it too broad because "otherwise promote" follows after two types of conduct at which the bill itself was aimed.

Now, to be perfectly frank with you, when I first heard of this bill, I was a little startled that there would be a prohibition against travel in interstate commerce but having thought it through, I believe the concept is a very good one.

Why should we permit people engaging in an unlawful activity to utilize interstate travel facilities?

I mean, the concept of prohibiting the introduction into interstate commerce of certain commodities has long been accepted.

Now, the concept is before the committee, of why we should permit these types of individuals to utilize the rail transportation, the aircraft or drive along the State highways or Federal highways in order to further their unlawful activities.

I think that the concept is good. It might be a little startling at first blush but I think, upon analysis, that there is no reason why this concept should not be enacted into law.

The CHAIRMAN. Suppose a person declares it to be his intention to go from the District of Columbia into the State of Maryland to commit an unlawful act or a series even of unlawful acts, concerning either liquor, narcotics, prostitution, or gambling.

Then he goes into Maryland and does not do anything at all. In other words, he has expressed intent. You prove the intent. He then crosses the State line but he does not do anything when he gets to the State of destination.

Would that be considered a crime, under the wording of this bill?

Mr. MILLER. Let me answer it this way, Mr. Chairman. In order to prove a crime under the circumstances you state, first of all, we would have to prove that there was a business enterprise in the District of Columbia which was unlawful, that is, it involves gambling, liquor, narcotics, or prostitution.

Then we would have to prove the conspiracy, if you will; namely, that he was going to travel into Maryland, to commit some act in furtherance of this unlawful business.

The CHAIRMAN. Where do you say that, Mr. Miller?

You say:

(a) Whoever travels in interstate commerce or foreign commerce with intent—

to do one of three things:

- (1) distribute the proceeds of any unlawful activity; or
  - (2) commit any crime of violence to further any unlawful activity; or
  - (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity \* \* \*
- shall be fined and punished.

Now it strikes me, the only requisite for conviction is the intent.

You don't say anything in the act that there must be something else besides the intent. You say the intent to do these things, shall be a crime. I think that is so.

Now, I would like to be enlightened.

Mr. MILLER. Yes. If you start, if you read the first phrase, whoever travels in interstate or foreign commerce with intent to distribute.

The CHAIRMAN. Those are the two things under this bill as it is now worded.

It strikes me that it spells out a crime—the traveling and the intent.

If you prove those two, and the intent is to commit these crimes, enumerated, then it is all that is necessary. I would like you to tell us where there is spelled out in the words, the need for additional proof of some action, in the State where a man goes into, to which he goes, where are the words showing it?

Mr. MILLER. This is why I went back to the definition of business enterprise. There has to be a furtherance of a business enterprise, involving gambling, liquor, narcotics, or prostitution offenses.

Mr. FOLEY. At that point, may I interrupt you to clarify this.

Would you say that as a condition precedent, for any violation of this statute, the individual concerned must be engaged in a business enterprise which is illegal in these four categories that you are talking about?

Mr. MILLER. Absolutely.

Mr. FOLEY. In other words, it cannot be a legitimate business with an incidental violation resulting from the interstate travel?

He must first be engaged in the unlawful activity, as a business man?

Mr. MILLER. That is exactly the concept we tried to embody in this bill, Mr. Foley. That is why I go back to the definition of business enterprise, in order to—

The CHAIRMAN. Still you define what an unlawful activity is, but in subdivision (b) you state what an unlawful activity may be; but you still don't spell out the need to be engaged in that State in which you enter, in that unlawful activity. All you have to do to spell out a crime here, is to prove intent, when crossing the State line—the intent to engage in that unlawful activity which you explain concerning regular business, gambling or liquor, narcotics, or prostitution, in violation of the laws of that State, or extortion and bribery.

I don't see anything in the act which says you must prove that unlawful; the perpetration of that wrong, involving the unlawful activity. We might be able to tighten this up, I think, but we want your enlightenment.

Mr. MILLER. Mr. Chairman, in order for us to bring any prosecutive action under this statute, the first thing we are going to have to prove is that there was a business that was unlawful under the laws of the State and that business involved the specified violations here.

Mr. ROGERS. As to the laws of this State, are you saying, or of the United States, in your definition of an unlawful activity. You bring in, involving gambling. Well now, my State authorizes horserace betting and dograce betting. That is lawful, in that State; but if he was engaged in business, to come into the State of Kansas or Utah, for the purpose of setting up a parimutuel horserace or a dograce, which is unlawful, would he then violate the law, if you left the District of Columbia and went to Kansas for the purpose of setting up a parimutuel betting race, in the State of Kansas? Would he be in violation of this statute if he did that?

Mr. MILLER. If I understand your question, Congressman Rogers, you are saying that the conduct of his business is unlawful under the laws of the District of Columbia?

Mr. ROGERS. You testified as I understand your testimony that in order to violate this law, he must be engaged in some business; but that business that he is engaged in, if he travels in interstate commerce, must be against the law of the State that he goes into, or against the law of the United States.

Now, I am pointing out, suppose a man leaves here, engaged in the business of gambling, and says, "I am going to Kansas City, Kans., and set up a gambling device." It is against the law of that State. Well now, when he leaves and goes to Kansas, must he then set up the business in Kansas in order to be guilty under this statute?

Mr. MILLER. The concept of the bill, Congressman, is that there is a business in the State of Colorado——

Mr. ROGERS. Yes.

Mr. MILLER. If that business is lawful in the State of Colorado——

Mr. ROGERS. Yes.

Mr. MILLER. Then he is traveling in furtherance of a lawful business enterprise.

Mr. ROGERS. Yes.

Mr. MILLER. There is no——

Mr. ROGERS. Suppose he stops off at Kansas and sets up a book——

Mr. MILLER. And it is unlawful in Kansas.

Mr. ROGERS. It is unlawful in Kansas.

Mr. MILLER. We would have to show that he traveled to establish a business enterprise in the State of Kansas. We would have to show that that business enterprise was unlawful because it involved gambling in violation of the laws of the State of Kansas. Then, if he traveled from Kansas to further that activity, there would be a violation. For example, let's take Nevada, where gambling is legal, which is the same situation you cited.

There you would have a legal activity, under the laws of the State of Nevada; if this man travels to Virginia to set up an unlawful enterprise, as I conceive the wording of this statute, that would be covered. This would be a violation of this statute.

Mr. ROGERS. If he is going to Nevada?

Mr. MILLER. No. No. If he is in Nevada, if his business is in Nevada.

Mr. ROGERS. Yes.

Mr. MILLER. And if he travels from Nevada to Colorado, where it is unlawful, I conceive that there would be a violation of this statute.

Mr. MILLER. In other words, we know craps, as an example, is legal in Nevada.

Mr. MILLER. Yes.

Mr. ROGERS. In fact, this actually occurred recently:

A group came from there and thought they had the right-of-way and set up a gambling institution near Denver. Now, they were engaged in lawful business in the State of Nevada but when they came into Colorado and set it up, they were violating the laws of Colorado, which is a misdemeanor.

Well now, they were engaged in the business of gambling so under this law, because they were engaged in the business of gambling, he could be indicted for crossing from Nevada to Colorado.

Is that right?

Mr. MILLER. Congressman, I think it is right for this reason: When he first traveled in interstate commerce to reach the State of Colorado, he did not have any gambling enterprise in Colorado.

Mr. ROGERS. He came to set it up.

Mr. MILLER. He came to set it up.

Mr. ROGERS. He came to set it up, in this case, and went back to Nevada, and got some of the boys to run the tables.

Mr. MILLER. Well now, if he set up the unlawful business in Colorado, and then left Colorado, and traveled in interstate commerce to further that business in Colorado, then the scope of this statute would come into play.

Mr. ROGERS. As I get it, he came in, set it up, and then called some of the boys that knew how to handle dice, and so forth, to run the games, and they came to Colorado.

Now, I don't know whether he went back and came back with them, but at any rate, he came, set it up, and then they came. That is, the people who run the games. Well, is he guilty under this proposed law?

Mr. MILLER. Congressman—

Mr. ROGERS. Or did the fellows who came later, who came after he had set up the game, which is unlawful; are they guilty?

Mr. MILLER. The ones that come later are, and this brings up the whole basic concept of this bill, that there is an organized course of conduct within the confines of a State which is unlawful. That is a condition precedent.

Mr. ROGERS. Then I would take it from your answer—pardon me for interrupting—that the man who came first and set it up, is not guilty of violating this section?

Mr. MILLER. Not unless we can show he was coming from Nevada, where he has a business enterprise that is lawful, to establish a continuous course of conduct in gambling violative of the laws of Colorado.

Mr. ROGERS. Yes, sir.

Mr. MILLER. If he was coming from Kansas, where such a business enterprise was illegal—he had a business in Kansas, a gambling business—he ran a casino, and some floating crap games and the like—he had an organization of 10, 20, 30 men; if he left Kansas now, this is in violation of Kansas law, I might add. If he leaves Kansas to come into your State, sir, and to set up a new business or to promote in some way his established business in Kansas, then I conceive there would be a violation of the statute; but you would have to have a continuous course of conduct, as defined, as a business enterprise, in this bill, which is unlawful under the laws of the State in which it is operated, and then, travel in furtherance thereof.

Mr. ROGERS. Of course, did I get your explanation, that if it is lawful in the State where he set up the business, then he goes into a State where it is unlawful, he is not guilty? He does not violate this proposed law?

Mr. MILLER. That is correct.

Mr. ROGERS. But if he is in a State which prohibits the operation, the business activities, as you point out he had a floating dice game in Kansas, and came into the State of Colorado in furtherance of it, then he is guilty—this one instance—in that instance, but not in the other. That is correct.

Mr. TOLL. May I follow up the answer, Mr. Miller, that you gave to Mr. Foley and to Congressman Rogers, with an illustration of a fellow that conducts a tavern in Pennsylvania, where the sale of liquor is legal; he goes to New Jersey, buys his liquor by the case, brings it to his tavern in Philadelphia, does not put the stamps on.

That would not be a violation under this law, would it?

Mr. MILLER. I think there has been a misconception of this statute in this regard. When we defined business enterprise as one involving gambling, liquor violation, and the like, we were thinking of the business itself as being an illegal business. Any business enterprise can have an employee or the president or someone down the line commit some act which is a violation of a statute and therefore, a crime. I mean, he might be rolling dice in the backroom for example, which is a violation of the State law.

Now, that does not make the business enterprise, itself, an unlawful one. It merely means that one individual has committed a crime, and it has no relation to the business enterprise itself. So I do not foresee that the factual situation you outlined would come within the purview of this bill.

The CHAIRMAN. Would it be better by way of exposition, if you had the language read more or less as follows: Whoever is engaged in an unlawful business as defined, crosses State lines with intent to distribute the proceeds of unlawful business—would that not be a better way to handle it?

In other words, you have three elements.

First, you have to prove being in an unlawful business. My suggestion is, whoever is conducting an unlawful business.

Second, you would have to prove the crossing of the State line.

Third, you would have to prove the intent to distribute the unlawful proceeds of that unlawful business.

There you have three elements, and I think you more or less, at least, nail it down better than you have nailed it down here.

To my mind, there would be no doubt then, as to what is meant.

It would be more than the mere intent. You would have to show there, that he has been engaged in some unlawful enterprise.

Any one of these four categories; that he crosses a State line; that he crosses the State line with intent to distribute his ill-gotten gains.

Mr. MILLER. I think, Mr. Chairman, that that language might very well do it. That is what we intended to do. In any event, I would like to have the opportunity to sit down and examine it in the context of the bill, by my offhand reaction is that would solve the question and the problem that you have.

Mr. CRAMER. The bill as written, otherwise, would permit the gambler to operate the first business without any prosecution unless he traveled in interstate commerce in furtherance of it.

Mr. MILLER. That is correct. In other words, there has to be—there has to be, a business unlawful under the laws of a particular State.

Mr. CRAMER. Let me give you this example.

Suppose a man owns two gambling establishments; one in State X, where gambling is legal, and one in State Y, where it is illegal. X, legal; Y, illegal. He does all his gambling in State Y where it is legal—

Mr. MILLER. Yes.

Mr. CRAMER. State Y, which is illegal, rather, and travels every week between the two States to conduct the business of each establishment in each State, and to collect profits for deposit in State Y. He would be breaking the law under the proposed bill.

Mr. MILLER. If I understand it, Y is the illegal gambling, is that right?

Mr. CRAMER. Illegal.

Mr. MILLER. All right. So he would be traveling from Y to X to further his unlawful activity in State Y and I conceive that to be a violation.

Mr. CRAMER. How about the reverse?

Mr. MILLER. I do not.

Mr. CRAMER. In other words, it depends on where he does his banking, where it is illegal?

Mr. MILLER. You have to tie the interstate travel to an unlawful, illegal transaction, otherwise, any place you travel, interstate would be covered.

Nevada, of course, is the best example, which we went into with Congressman Rogers. There it is legal. If that is the policy of the State to permit gambling, that is a determination by the State that it is legal. Now, a man traveling in furtherance of that gambling activity, to say he takes the proceeds, deposits them in a bank in New York, I can't conceive he falls within the provisions of this bill because there is no unlawful business he is furthering.

Mr. CRAMER. Even though he may be doing the gambling in the State of New York as well, so long as the traveling did not further the furtherance of illegal activity in New York, so it is a grant of immunity for his business in Nevada?

Mr. MILLER. I would not call it a grant of immunity because the State legislative body, in its wisdom, has already granted that immunity for that State, of the activity.

Mr. ROGERS. May I interrupt.

Directing your attention to that, that actually is on line 12 page 2 under (1)—

\* \* \* the laws of the State in which they are committed or of the United States.

Now, my first question is, if there should be a law prohibiting gambling, liquor, narcotics, or prostitution, of the United States, and he violated one of those, or intended to violate it, he would be guilty under this section.

Mr. MILLER. That is right.

Mr. ROGERS. Under that interpretation.

Mr. MILLER. I assumed in all these questions, we are referring only to State laws, and whether or not the conduct was lawful or unlawful.

Mr. ROGERS. That is what I know. That is, at least, what I thought we discussed.

Now, when you add, "or of the United States," it is a violation of the laws of the United States as it relates to gambling, liquor, narcotics, or prostitution.

Mr. MILLER. Right.

Mr. ROGERS. Now, we know, as an example, that lottery is legal in Nevada but if you use the mails and sent it out of Nevada, and a man traveled from a State where a lottery is not permissible, into Nevada, and started it, would that be gambling within the violation of the statute of the United States?

I just would like a clarification as to the applicable punishment that could arise as a result of violation of the U.S. laws. That is what I want.

Mr. MILLER. Congressman, the first example, he is in Nevada. He mails lottery equipment. That might be in violation of the present Federal lottery statute. He violates the Federal statute against mailing lottery tickets there, even though where he was, in Nevada, he could play the lottery or run lottery games all he wanted, the minute he used the mail to ship these things, he would violate the Federal law. That act of mailing; this overt act of mailing, would be unlawful. It still would not make the lottery business he was conducting under the laws of Nevada unlawful because he has only done one prohibited act; i.e., mailed these lottery tickets, which brings Federal jurisdiction into play.

Mr. ROGERS. Well, whether it is that or my thinking that confuses me, but the clarification that I am looking for, is that you limit it to gambling, liquor, narcotics, or prostitution offenses.

Mr. MILLER. Right.

Mr. ROGERS. Of the State; and then you say, "or of the United States."

Now, if he violates the law of the United States after he gets to Nevada, then he can be punished under this, as I take it, if it falls in those categories?

Mr. MILLER. That is right.

For example, we know gambling is lawful in the State of Nevada. There is a Federal statute requiring those engaged in the gambling business to have a wagering stamp tax. Let's assume that somebody in Nevada is gambling. He does not have the Federal stamp. Now, he is guilty of a specific crime; that is, gambling without this Federal stamp. But nevertheless, that does not make his business unlawful under the State law.

Mr. ROGERS. But if, as an example, he lived in the District of Columbia?

Mr. MILLER. Yes.

Mr. ROGERS. And he decides that, "I am going to Nevada and conduct a gambling game. When I get there, I am not going to buy a license as a part of the revenue laws, to conduct gambling games," and he goes and starts the game.

Now, he would be guilty then of violating the laws of the United States.

Mr. MILLER. He would only be guilty of gambling without the wagering stamp, once he started his game in Nevada. He is in the District of Columbia. If he has a gambling enterprise in the District of Columbia which is unlawful under the laws of the District of Columbia, and if he then travels to Nevada with the intent to further his business in the District of Columbia, there is a violation of this proposed bill.

If he is gambling in the District of Columbia without a stamp tax, there would be a violation of the Wagering Stamp Act, as well as, perhaps, a violation of this bill, too, because he would be gambling in the District of Columbia contrary to the law of the District of Columbia.

The CHAIRMAN. One more question.

The way this is worded—I refer to page 2, line 4—" \* \* \* or facilitate the promotion, \* \* \*" and so forth. now, unless you adopted the wording into that, that I suggested, and you leave it as it is, as originally submitted—let's take a situation like this.

I own a car in the District of Columbia and every morning, I take a known gambler into Baltimore and bring him back at night—a friendly gesture, probably. But I know what that gambler is doing.

I know he is engaged in an unlawful activity in Baltimore. I don't engage in that activity, but I am facilitating the promotion, management, of an unlawful activity and therefore, under the original wording, I might be involved, even though I personally, am not engaged in that bookmaking. I am not a runner for the bookmaker. I just accommodate him by taking him backwards and forwards, to and from his home, in the District of Columbia. Therefore, again, I think it is necessary to have as a condition precedent words which indicate that the person against whom the prosecution is directed, has actually been engaged in some unlawful activity and he crosses the State line to further that activity.

Mr. MILLER. Well, in the situation, the factual situation which you outlined, if we could prove that this friendly gesture, as you call it, that the man was driving the car intended to give aid and assistance to this gambling enterprise, by providing transportation so as to further the activity of the unlawful enterprise, which we would also have to assume, theoretically, we might be able to make out a case against the driver of the car.

We have to show he was involved; that he intended to further this unlawful enterprise in which the gambler was engaged.

This statute is not an easy one. I mean, we have written this in, and I know it looks broad, but I think—

The CHAIRMAN. That is an understatement when you say that.

Mr. MILLER. I know. I think if you analyze it, Mr. Chairman, you will see that there is a very substantial burden of proof on the Government under this statute. Having to prove the business enterprise in itself would be a substantial undertaking in certain circumstances. Then we have to show that there was an overt act to further this business enterprise; that is, the travel in interstate commerce to commit certain acts.

Now, as a practical matter, in practically every case we bring under this, it may be necessary to show that he actually performed the acts that he intended to perform when he embarked on the interstate travel.

Now, the concept of a conspiracy in criminal law—in other words, the narcotics laws, for example—there you have a plain conspiracy with no overt act.

Now, if people conspire to violate the narcotics statute, no overt act is necessary.

Now, under the general conspiracy statute in the United States Code, you need the conspiracy plus the overt act.

Now, likening the general conspiracy statute to what we have here, you would have to show an agreement with respect to the unlawful business and that you were going to travel in interstate commerce to further that unlawful business. Therefore, you have the unlawful agreement and you have the overt act; that is, the traveling in interstate commerce.

Now, proving that overt act and the fact that there was an intentional performance of something in furtherance of the business is not going to be an easy burden to sustain.

Now, we have discussed this, and, of course, the classic case comes up. Suppose "A" and "B" in New York agree that they are going

to travel to Florida to murder somebody, let's say. They say, "We agree." Then they go. They buy their ticket. They get on the plane, and they travel down to Miami. They get off the plane in Miami. They say, "This is not a very good idea. Let's go home." And they just come back and they don't perform what they were trying to do.

Now, under this bill we would have to show the unlawful activity, and we would have to show further, that these people actually traveled in interstate commerce with the intent to commit a murder to further this unlawful activity and I say that concept is already embodied in the criminal laws today, where, under the narcotics statute, the mere agreement violates the statute, and under the general conspiracy statute, in title 18, you have an agreement, plus an overt act.

In this case, the overt act being, actually, embarking with gun in pocket into interstate travel.

Mr. ROGERS. Might I interrupt there?

Mr. MILLER. Yes, sir.

Mr. ROGERS. As I understood your explanation a moment ago, the gravamen of this charge is that you must be engaged in business, unlawful in its nature.

Mr. MILLER. That is right.

Mr. ROGERS. In the State where you conceive of it; that you have the business into the State that you are going into, and it is unlawful in that State.

Well, now, in the classic example that you just cited, of murder, would the people have to be engaged in the business of murder in order—before they would be guilty of that crime—of that violation of this law?

Mr. MILLER. No, sir.

In the first place, the business enterprise itself, we have to prove, in New York, as being unlawful. Let's say it involved gambling.

Mr. ROGERS. The business enterprise, as I take it, may be gambling, liquor, narcotics, prostitution.

Mr. MILLER. Right. That is correct.

Mr. ROGERS. Now, if they are engaged in the business of murder, as sometimes they are accused of, they would not be covered?

Mr. MILLER. No, they would not.

Mr. CRAMER. Would the gentleman yield on that point?

Mr. ROGERS. Yes, sir.

Mr. CRAMER. Of course, when it comes to killing, relating to gambling and the numbers racket, and so on, the killing that takes place is done in connection with that business; thus it is the killing off of competition; is it not? So, in that instance, if these two people traveled for the purpose of committing murder as a part of a conspiracy in connection with gambling, they would come under the statute; would they not?

Mr. MILLER. Yes. As I understood Congressman Rogers' question, it was, if you are engaged in the business of murdering, are you covered by the bill? I said no, because it is limited to the four types of business activities.

Mr. CRAMER. Is it not true that Murder, Inc., the Maffia and so forth, when hired or entering into a contract, which I am sure you are familiar with, for the murder of someone, is customarily con-

nected with some of these criminal activities which are defined—gambling, narcotics, liquor, or prostitution.

Mr. MILLER. Correct.

Mr. CRAMER. Therefore, it would come under the purview of the act, either under conspiracy or otherwise.

Mr. MILLER. If we could in some way tie it in, so we can show an enumerated unlawful business, and this is in furtherance of that. Yes.

Mr. CRAMER. Is it not true, it is absolutely necessary to have some type of illegitimate dealing in interstate commerce; because under the present law, as has been evidenced by numerous correspondence between my office and the Attorney General's office, that under even the Fugitive Felon Act, which was discussed many times in various civil rights hearings, under title one, the 1960 act, consideration was given whether or not the Attorney General could or would, as a matter of policy, go in and try to help determine who the suspect is. Under the Fugitive Felon Act, as a matter of policy, the Department of Justice does not go into such a case unless there is a suspect. Isn't that correct?

Mr. MILLER. Well, as a practical matter, the investigative jurisdiction of the FBI is limited to Federal crime. In other words, then, there has to be a showing of a violation of a Federal statute before the FBI has investigative jurisdiction.

Now, you may recall—I mean, the obvious example of this is the presumption—I believe it is a statutory presumption—is that 24 hours after a kidnaping, it is presumed that the victim has been transported in interstate commerce, thus giving the FBI investigative jurisdiction.

Mr. CRAMER. Right; so because the Federal Government, then, did not have jurisdiction, even though they requested help in one instance, which I put in the record in the hearing, in 1953 and 1954, because they believed the Mafia had done the job—they asked for Federal aid—the Federal Government said, "No. It is not under our jurisdiction."

Secondly, they requested that the Mafia be put on the subversive list, to give, perhaps, the FBI jurisdiction to help them in the matter. That was denied. Are you familiar with that?

Mr. MILLER. I am not familiar with the case you speak of.

Mr. CRAMER. Has any study been made, to your knowledge, with regard to the Mafia in recent years, to indicate what might be done to bring it within Federal jurisdiction, such as putting it on the subversive list?

The CHAIRMAN. That is why we have these series of bills that we have criminal organizations.

Mr. CRAMER. That is why I asked the question, to determine the need for this legislation, Mr. Chairman.

The CHAIRMAN. Oh, yes, sir. Let's get on.

Mr. CRAMER. Can he answer that question?

The CHAIRMAN. Yes. I do want to get on, and counsel wants to ask one more question after this.

Answer that briefly, will you?

Mr. MILLER. The answer to your question is that the information we have, which was outlined to a certain extent by the Attorney General, is the tremendous amount of gambling activity going on in this country today.

Now, whether the Mafia or another organization is involved is not material to the Federal Government because we consider them equally bad.

Now, whether there has been an investigation directed to the Mafia itself, I could not answer your question, but I would say, sir, that if the Mafia is organized as it obviously is, that undoubtedly an investigation has been conducted which covered its activity.

Mr. CRAMER. Well, as I understand it, in July of 1958 there was a study submitted to the Department of Justice—two studies—entitled, "Mafia Sicily," and "Mafia Italy," in which a finding was made that the Mafia is a national menace. It was prepared by the FBI, as I understand it. At that time, it seems to me, it would have justified the Justice Department to reconsider its position as to whether the Mafia should be put on the subversive list, so that its activities could be brought under Federal surveillance, and so as to aid local law enforcement officials, as well.

Are you familiar at all with those studies?

Mr. MILLER. I am not familiar with the study of which you have spoken and on the question of placing it on the subversive list, that would be something which I don't believe is within the jurisdiction of the Criminal Division itself.

Mr. CRAMER. Well, the Attorney General can do it by order.

Mr. MILLER. Yes.

Mr. CRAMER. Could I ask, Mr. Chairman, that he be requested to determine whether such a study was made? If so, the committee could be advised as to the nature of that study. I think it is important.

The CHAIRMAN. I would like to take that question under advisement. I don't know whether or not the Mafia is on the subversive list. I don't know, but let me think about that. I don't want to ask unnecessary questions, and I might think about that.

Mr. CRAMER. Well, Mr. Chairman, there have been 22 murders in my district, that the local law enforcement officials have indicated, at least in part, are directly the result of the activities of the national Mafia organization, and they have asked for help. They have been denied help. I think, perhaps, this legislation will give them help, but I think we need to be fortified with the evidence the Justice Department has, to indicate the need for such help.

That is why I asked it.

The CHAIRMAN. I do not deny your request. I will take it under consideration.

Do you want to ask a question?

Mr. PEET. Yes, sir.

Mr. MILLER, is it fair to say that the policy of your proposal here, H.R. 6572, is to get at the more serious criminal activities in interstate travel or foreign commerce?

Mr. MILLER. Yes.

Mr. PEET. Involving the enterprises under consideration?

Mr. MILLER. Yes, sir.

Mr. PEET. Now, have you had a chance—

The CHAIRMAN. Don't shake your head. You might say "No," or the stenographer won't get it.

Mr. PEET. Have you had an opportunity to study title II of Mr. Cramer's bill dealing with the same subject matter, which was introduced after the Department of Justice proposal?

The CHAIRMAN. Let's take these bills one by one. We will get to that after you have taken up these bills. Proceed on page 4 with your reading of your statement, please.

Mr. CRAMER. Mr. Chairman.

The CHAIRMAN. I am sorry.

Mr. CRAMER. Could I at least ask that there be inserted in the record the letter that I wrote the Attorney General on the subject at this point.

The CHAIRMAN. Yes. It may be inserted.

In re H.R. 5186, a bill to establish the crime of conspiracies to commit terroristic crimes and activities when interstate commerce is used with the objective of stamping out national racketeering.

HON. WILLIAM P. ROGERS,  
*Attorney General of the United States,  
Department of Justice, Washington, D.C.*

DEAR ATTORNEY GENERAL ROGERS: You will find enclosed herewith a copy of the bill above referred to which I introduced on March 3 and about which I made a speech on the floor of the House, a copy of which I have previous forwarded to you. I am herewith forwarding to you a copy of the bill for your consideration, anticipating that the bill will be officially forwarded to you by the Judiciary Committee for a report by your Department. Of course, I am hopeful that this bill will result in favorable consideration of some legislation that will accomplish the same objective.

To amplify on this matter, I am sure your files will indicate that some 4 years ago, subsequent to the occurrence of one of the murders which I referred to in my remarks as one of the "19 unsolved sawed-off shotgun gang murders," I directed a request to the Justice Department that the FBI and the Department act favorably upon the request of the local law enforcement officials and assist those officials in attempting to solve this murder by placing the Mafia on the subversive list which would make it subject to the Justice Department surveillance.

I stated at that time that it was my opinion that because this was a murder similar to those that had occurred in the past and which were also unsolved, apparently it was being done on the basis of the killer being shipped in and out rapidly in interstate commerce and that there was a connection between such killings and national gangsterism and possibly the Mafia or Murder, Inc. It was on this basis that I thought the FBI could accept this responsibility but I was advised that the Department of Justice had determined that it had no jurisdiction in the matter because no Federal crime was involved and that the Mafia did not come within the definition of subversive and thus could not be placed on your list pursuant to Executive Order 10450.

The purpose of my bill is obviously to plug up the loophole and in the future to make the FBI and the Justice Department available in similar instances with the presumption that interstate commerce is involved when this type of killing or other crime takes place.

I wish it clearly understood that my remarks in the record refer to the national activities of Murder, Inc., the Mafia, and other gangster conspiracies which prey upon cities such as Tampa and I cited Tampa as an example that I think is one of the clearest indications that this nefarious outside influence is affecting the local community, and that, because such influence is of an interstate nature, the local law enforcement officials have not been capable of coping with this problem. Such officials obviously are not equipped to cope with this problem when it is of an interstate nature, as is clearly indicated by the report of Sheriff Ed Blackburn, Jr., of Hillsborough County, for the assistance of the FBI and the Department of Justice to place the Mafia on the subversive list pursuant to Executive Order 10450, his request having been made in the fall

of 1953 and my request having been made to look him up. My predecessor, the Honorable Courtney Campbell, properly initiated the sheriff's request by forwarding it to your Department.

Since that time we were advised that no Federal crime was involved and that the Mafia was construed not to come within the definition of subversive, you know, in that I have been in consultation with the Department on a number of occasions concerning it, that I have been in the process of considering legislation to make such interstate gangster activities a Federal crime and the enclosed bill is the consummation of these efforts.

I wish to make certain that you understand that my citation of Tampa is for the purpose of indicating a concrete example of where, in my opinion, the outside influence of gangster conspiracies in the past has had a very telling effect beyond the power of the local law enforcement officials to cope with and my reference to the city's having one of the worst crime records of course refers specifically to the 19 unsolved murders in the past. It is obviously not in any way intended as a reflection upon the efforts of the local law enforcement officials to clean up the city. To the contrary, it is my opinion that in recent years much has been done within their jurisdiction to clean up Tampa but that this national conspiracy still poses as a threat to the future safety of the citizens of this community and communities throughout the country.

It is my hope that legislation of this nature will be enacted, first, in that it will be a deterrent to future national activities of gangsters having local effects similar to those that have happened in Tampa in the past, and, secondly, should crimes be committed of this nature in the future in Tampa or anywhere else, the Department of Justice will have jurisdiction to investigate the matter.

I believe this matter is of sufficient concern for you to give personal attention to it and that is the reason for my forwarding to you a copy of my remarks and a copy of my bill and for calling this to your attention again, it being a followup of my previous correspondence and discussions with the Department on this matter.

Thanking you for your attention to and consideration of this matter, and with kindest regards, I am,

Sincerely,

WILLIAM C. CRAMER,  
*Member of Congress.*

Mr. MILLER. The next bill that I would like the subcommittee to consider is H.R. 6571, which proscribes the interstate transportation of wagering paraphernalia.

This bill is one aspect of the Department's intensive attack on organized gambling, which supplies the bankroll for all the other multi-state criminal activities which tax the American people to the tune of \$22 billion a year. Our records indicate that the three most prevalent types of gambling involve bookmaking, wagering pools on sporting events, and the so-called numbers racket. H.R. 6571 is directed specifically at the interstate transmission of various kinds of paraphernalia used in these three forms of gambling.

The three specific methods of gambling enumerated in subsection (c), numbers, policy, and bolita, are similar types of lotteries wherein an individual purchases a ticket with a number. The only difference between numbers, policy, and bolita, is the method of selecting the winner. In bolita, popular principally in the southeastern part of the United States, a number is selected at the end of the day by the picking of a wooden or ceramic ball from a bag. Each day a group of people gather together and a bag with 100 ceramic balls is passed from hand to hand until someone shouts "bolita," at which point the winning ball is selected by the man holding the bag. I might interject at this point, that one of the ways they fix the number to be drawn, they will heat the ceramic ball so the man that has the bag when "bolita" is called, can feel around on the outside, until he finds one that is warm. He works it up to the top. That is the number

that wins, and of course, usually it is the number that has received but little play that day.

Other gambling devices, such as roulette wheels, are not within this bill, but are included within H.R. 3024, currently pending before the Committee on Interstate and Foreign Commerce.

H.R. 6571 applies to—

any records, paraphernalia, ticket, certificate, bill, slip, token, paper, writing or other device used, or to be used, or adapted, devised, or designed for use—in these three enumerated areas of gambling. Such all-inclusive language is necessary in an attempt to cover all of the equipment or paraphernalia which will inevitably be devised by organized racketeers in an effort to avoid the sanctions of this bill. In addition, the restrictive judicial interpretations which vitiated the Anti-Lottery Act at an early date suggest that the bill should be broadly drafted in order to declare the legislative goal with sufficiently inclusive language.

I wonder if the committee has any questions now, on that particular bill?

The CHAIRMAN. Well, there was some question that some of the previous witnesses propounded, that this language might be a dragnet and if chance books and bingo apparatus was sent across State lines, in States where bingo was legal, there might be some difficulty there.

Mr. MILLER. On that, Mr. Chairman, the bill is limited to the three types of gambling; that is, bookmaking, wagering pools, with respect to sporting events, numbers policy, bolita, or similar game.

We do not conceive that bingo is incorporated in that language. Bingo is not a numbers policy, bolita, or similar game.

The CHAIRMAN. Could it be construed as a sporting event involving numbers?

Mr. MILLER. Wagering pool, with respect to the sporting event, Mr. Celler, I cannot conceive that it could be.

The CHAIRMAN. A numbers game. It could be called a numbers game.

Mr. MILLER. No. I am quite sure it was not our intent, and I think the language clearly excludes bingo because a numbers game is a type of game that has—I mean, the name itself, ties into a specific type of operation, as does policy and bolita. They are all, really, numbers games. The only basic difference is the manner in which the winning number is chosen. So when we speak of a similar game, under the normal rules of statutory interpretation, it would be limited to a numbers game or a variation thereof. Now this would not include bingo.

The CHAIRMAN. Would it include the chances that some of the gasoline stations issue—they issue sort of slips, with numbers on them. If you win, you get a prize. You get one of these slips every time you get gasoline from the station.

Mr. MILLER. Mr. Celler, I do not foresee again, that that would be included because as I said before, the numbers game, a numbers game, is a type of gambling operation that has a very well-defined manner of operation and if necessary, any defendant being charged with violation of this proposed bill, assuming it is enacted, he can certainly put people on the stand to testify as to exactly how a numbers game is run and what is a numbers game; and I think it would be

very clear that the type of certificate you just mentioned would not be included.

The CHAIRMAN. Would a punchboard be eliminated here?

Mr. MILLER. The punchboard would not be included in the statute, Mr. Celler.

The CHAIRMAN. And how about baseball pools and football pools?

Mr. MILLER. They are wagering pools with respect to a sporting event. I conceive that they would be included in this statute.

The CHAIRMAN. How about sweepstakes?

Mr. MILLER. Sweepstakes? I would say not. Well now, wait a minute. The Irish Sweepstakes, I would say yes, because there is a wagering pool with respect to a sporting event. Yes. Yes. It would be included.

The CHAIRMAN. Well now, let's see. There was testimony to the effect that printing houses, that print tokens or slips or paper, that might be used in sweepstakes, they would be included here also, would they not?

Mr. MILLER. Yes; on that, Mr. Chairman, if they printed these tickets and if these tickets were sent in interstate commerce to be adapted, to be used in one of these three styles, they would be included.

One thing that, frankly, we did not think about, was the fact that where you have legalized parimutuel tracks around the country, these tickets are sometimes manufactured, say, in Ohio and they are shipped to Miami, then used in parimutuel betting. Well, now, that type of thing, we feel, since it does deal with the legalized operation under the State law, we should have perhaps an exclusion in here on that, to cover it. I understand that the Thoroughbred Racing Association was in and discussed this possibility.

The CHAIRMAN. You concluded that that should be eliminated so there would be no possibility of their being held for a crime?

Mr. MILLER. Yes.

The CHAIRMAN. Any questions on this bill?

Mr. CRAMER. May I ask one question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. CRAMER. I note that you indicate that gambling devices included in H.R. 3024 is also included as a part of title 5 of H.R. 6909, the omnibus bill. I understand that the Justice Department favors that bill, does it not? Shipping of gambling devices in interstate commerce?

Mr. MILLER. Oh, this is the one that is pending now, before the Ways and Means Committee.

Mr. CRAMER. Also in title 5, of 6909.

Mr. MILLER. I understand that bill is favored, yes.

Mr. CRAMER. I beg your pardon?

Mr. MILLER. I understand that that bill is—is it 3024? I am not acquainted with these numbers—is identical with the bill that the Department of Justice introduced on the subject.

Mr. CRAMER. You say the Department of Justice favors it?

Mr. MILLER. If that is the one that is pending before there, yes, they do. I believe it is.

Mr. CRAMER. It is on page 10 of 6909, title 5.

Mr. MILLER. Yes.

Mr. CRAMER. Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Miller, you say that punchboards, if distributed in the area through the mail in two States, for the benefit of an extension to a hospital, would be included under your section (c)?

Mr. MILLER. Punchboards?

Mr. FOLEY. Yes.

Mr. MILLER. No. No. They would not be. They would not be.

Mr. FOLEY. Would that come under 3024, would you say?

Mr. MILLER. Which bill is that, Mr. Foley?

Mr. FOLEY. That is the one that you recommended before—interstate and foreign commerce, which is part of Mr. Cramer's bill.

Mr. MILLER. I would think not because it talks in terms of machines or mechanical device including but not limited to roulette wheels and similar devices designed and manufactured primarily for use—

Mr. FOLEY. It is limited to mechanical devices. A punchboard is not considered a mechanical device. Therefore, it would not be included.

Mr. MILLER. It would not be included.

Mr. FOLEY. The Post Office Department, in connection with this bill, 6571, suggested the addition of an additional section (2) because they point out, as a possible loophole, that the mails could be used and that under existing law it would not be a violation of section 1302 of title 18 and they suggested that a deletion in the fifth paragraph of that section—the phrase “all such prizes,” and insert in lieu thereof, this language: “any article described in section 1952 of this title,” which would be what you are suggesting. Do you see any objection to that proposal?

Mr. MILLER. I certainly do not. In fact, this points out what I said before, the benefits of the hearing. Frankly, I did not even think about the Post Office Department. I think it is a fine suggestion.

Mr. FOLEY. That is all, Mr. Chairman.

The CHAIRMAN. Any questions?

Mr. PEET. No questions.

The CHAIRMAN. Proceed.

Mr. MILLER. Shall I proceed with my statement, Mr. Chairman?

The CHAIRMAN. Yes, page 6.

Mr. MILLER. H.R. 7039, dealing with the transmission of gambling information, was also introduced by you, Mr. Chairman, at the request of the Department.

Beginning as far back as the Attorney General's Committee on Organized Crime in 1950, similar bills have been sponsored as a part of the Department's legislative program. In fact, a bill on this subject has been before Congress as far back as 1909. The approach to the problem by the Department since 1950, which has not been successful, was embodied in the proposals sent to the Congress by Attorney General Rogers just before the present administration took office. Because of the past lack of success, and the opposition of the telephone companies, the problem was restudied and the bill has been redrafted in the form now before this subcommittee.

The Attorney General, in his testimony on May 17, explained in detail the need of the bookmaker for speedy wire service, and the extent to which organized gambling is dependent on full access to the facilities of our modern communications systems. Our purpose is to prohibit the interstate transmission of gambling information which

is essential to the gambling fraternity. H.R. 7039 therefore makes illegal the furnishing of any wire communication facility—

with the intent that it be used for the transmission in interstate or foreign commerce of bets or wagers, or information assisting in the placing of bets or wagers, on any sporting event or contest.

It provides sanctions also for whomever—

knowingly uses such facility for any such transmission.

The Department of Justice does not believe that this bill places an unreasonable burden on the common carriers who furnish or maintain wire communication facilities. Certainly, there are no good grounds why the common carriers should be exempted from the bill so that they could intentionally furnish and maintain the facilities used by gamblers in their illicit activities. In the Department's opinion, H.R. 7039 strikes an equitable balance by prohibiting only intentional activity on the part of the communications common carrier. If in the normal course of its business the carrier obtains information regarding possible use of its facilities for the transmission of gambling information, the carrier will presumably report such facts to the proper law enforcement officials. Even assuming that the State regulatory agencies would not permit the company to cease furnishing the service under these circumstances, the Department could not properly contend on these facts that the service was "intentional."

In view of the interest of the American public in sporting events and the reporting of such events, H.R. 7039 specifically exempts transmission "of information for use in news reporting of sporting events and contests." Thus the bill does not include within its sanctions the newspaper or television reporter who uses a telephone to convey the latest results of the baseball or football games to the newspaper or station for further transmission to the American public. In addition, the Department concluded that the sanction of license revocation available to the Federal Communications Commission was a sufficient deterrent to prevent television and radio stations from utilizing an undue proportion of their broadcast hours in the dissemination of race results. Earlier testimony by a representative of the Federal Communications Commission confirms that the FCC has the necessary authority to control any abuses in this area.

In any event, the evidence available to the Department indicates that customary news reporting, including that over radio and television, is not as necessary to organized gambling activities as the use of wire communications facilities. H.R. 7039 therefore selects for legislative attack that form of interstate transmission most crucial to organized criminal interests.

The CHAIRMAN. Well, now, do you believe that is so? Do you think that the Federal Communications Commission has sufficient power to prevent this evil? All that the Federal Communications Commission—as I understand their power—can do is one of two things. Either refuse to renew their permit upon an application of renewal or bring an action to revoke the permit. Those actions have been very rarely brought about during the time in which the FCC has operated. There are only a miniscule amount of permits that have been revoked. It is automatically, almost done in rubberstamp fashion, that permits are renewed. It is true the new Chairman of the FCC has indicated

a different policy, but do you think that that is sufficient, that power that rests in the FCC is sufficient to stamp out this evil?

Mr. MILLER. Mr. Chairman, I believe that it is sufficient and for this reason. The FCC under 312 of the Communications Act has perhaps the greatest power of any Federal agency. It has the capability—on a proper showing—of putting a man out of business—a radio station out of business—if they find that the grounds for revocation do, in fact, exist.

Now, as a practical matter, in the past, back when the Kefauver committee was investigating gambling and illegal activities in the United States, at that time, it was discovered that several radio stations were permitting their facilities to be used in a manner which was a direct aid to the gambling fraternity.

They were flashing instantaneous race results, and things of that nature. They were running 2 hours or 3 hours of horse racing direct from the track in the afternoon.

Once the Commission had this called to their attention, they acted. They sent out, as I recall it, questionnaires, and all this use of radio facilities ceased with the exception of two stations, I believe. They may have started revocation proceedings against those. Then they, too, agreed not to continue on with this broadcasting of race results.

There is another problem, frankly, that we had with this.

If the radio and television stations are brought within the purview of this bill, you create some rather substantial difficulties, and I think that is primarily from a drafting standpoint, because if you prohibit, then you get into the question of, are you going to prohibit the broadcasting of races, horseracing, live; and the answer is, well, you permit the Kentucky Derby and the Preakness. You get down to a point of almost identifying by statute, what style of races you are going to permit to be broadcast on a station; but I strongly feel, Mr. Chairman, that the FCC, if they become cognizant of any station which is utilizing its facility in such a manner, to aid the gambling fraternity, they will initiate action and I don't think there is much question but they would be successful.

The CHAIRMAN. There are two questions I would like to ask for clarification.

On page 1, line 8 or 9, you use the words:

writing, signs, pictures, and sounds of all kinds, by aid of wire, cable \* \* \*.

Does that include radio?

Mr. MILLER. The answer to your question, sir, is "No," it does not include radio. Now, this was considered—the definition that we have here is taken verbatim from the definition of wire communication facility in title 47 of the code. We left radio out for this reason. We felt that any time a telephone was utilized, well, you have two problems leaving radio out.

The first reason we left radio out was because of the difficulty in drawing a distinction between radio broadcasting and what they call point-to-point radio, which is used as an adjunct to the common carrier telephone system.

We left radio broadcasting out for the reason I just stated. Insofar as radio, point to point, we left that out for this reason. We felt that in any circumstance of a man utilizing the telephone, he would be using the wire aspects of the telephone system. For example, he will

pick up his handset, the wire is there. There is going to be a wire running into his house; from there, to the central exchange of the telephone company, and from there, out to perhaps a remote microwave repeater station; from then on, the microwave takes over, and that is radio, point-to-point radio.

Now, it might be that we could reconsider and insert in here, point-to-point radio, which would exclude radio broadcasting.

At the present time, however, I don't have any strong feelings one way or the other, about it, because the wire communication facility itself is being used, even though a portion of the message is being transmitted by microwave relay station.

The CHAIRMAN. Well now, I don't know whether you said it would or would not be included; television sometimes shows actual racing on Saturday afternoons. Now, that would be excluded?

Mr. MILLER. That is not covered by this bill, Mr. Chairman.

The CHAIRMAN. What language would exclude it? Subdivision (b) on page 2?

Mr. MILLER. The definition of wire communication would exclude it because it would not be included in there.

The CHAIRMAN. Would page 2, subdivision (b), lines 14 to 17, exclude it?

Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests.

Mr. MILLER. I would think it might be covered there.

The CHAIRMAN. Would you say news reporting?

Mr. MILLER. I would think that this could be interpreted as news reporting of a sporting event, but primarily, it is excluded by the definition of wire communication facilities.

Mr. FOLEY. Mr. Miller, do not many of these sporting events which are televised, involve the use of a telephone cable? They usually lease a coaxial cable.

Mr. MILLER. That is a distinct possibility. I had not considered that aspect of it.

Mr. FOLEY. A lot of these are special events that I am talking about. The play is not regular, but where they have a special event, they want to cover it. They have to put in a special coaxial cable.

Mr. MILLER. That is a very good point. That normally is furnished by the—

Mr. FOLEY. That is a wire facility.

Mr. MILLER. That normally is furnished by the telephone company. Yes.

Mr. FOLEY. Because, if you include, as you indicate, the mobile telephone, that is, on the receiving end, you say that is included because the wire facility is involved there. On the other hand, this would be the sending end, where he could use the coaxial cable.

Mr. MILLER. That is a very excellent point. You are very right. I would think then, we would have to—I would not want to seem to sit here, and suggest changes, but I do think we ought to consider this possibility of making certain that we are not trying to cover that type of thing.

I believe it probably would be covered under (b).

Mr. FOLEY. Possible news reporting—but I think it should be kept in mind.

Mr. MILLER. Yes. That is a very good point.

Mr. FOLEY. Another question. On page 1 of the bill, on that drafting, on line 7, and again on line 9, you refer—you use the word “and,” and I think perhaps the language should be “or,” because you say the receipt, forwarding, and delivering. Therefore, I think you mean receipt or the forwarding or the delivery.

Mr. MILLER. That is a very good point. I agree with that.

Mr. CRAMER. May I ask a question?

The CHAIRMAN. Excuse me. Just one more question.

On page 2, I would like to get some clarification on the word “assisting” on line 9:

Or information assisting in the placing of bets \* \* \*.

Now, would not those exclude TV? Would you not, by that language, include TV or radio? They would broadcast or telecast and assist in the placing of bets?

Mr. MILLER. We do not intend, as I say, for this statute—and I hope we drafted it so it excludes radio broadcasting and TV broadcasting.

Now, as a practical matter, what we are aiming at, is the actual utilization of the telephone facilities of this country to transmit this type of information. Now, you could certainly say that if radio broadcasting were covered, and if they ran the broadcast of the Kentucky Derby, that this might be information assisting in the placing of bets, but as a practical matters, I don't think we could logically contend that it was in fact included within it.

The CHAIRMAN. If your purpose is to exclude radio and television?

Mr. MILLER. Yes.

The CHAIRMAN. Would it not be well to say so? You do say so with reference to newspapers.

Mr. MILLER. It might very well be that we should do that, Mr. Chairman. As I say, we attempted to do it by the definition of “wire communication facility,” but it might be very wise, as you say, to put in this subsection (b), a proviso which would cover this point.

Mr. CRAMER. Why exclude radio and TV? The previous Attorney General's recommendation was to include it with certain exclusionary language. Now, I presume you considered that approach as well, did you not?

Mr. MILLER. As I understand it, historically, there has been the question of whether or not Congress should enact legislation which prohibited radio and TV stations from broadcasting instantaneous race results or broadcasting races live. It has generated a good deal of controversy down here in Congress.

Now, frankly, one reason we left it out was to attempt to avoid this controversy in the hopes that this bill would stand a better chance of enactment.

The second reason that they were excluded, as I tried to explain before, is that I do feel that the Federal Communications Commission, if they find that the licensee of a radio or television station is misusing the franchise he has received from the FCC, that they can step in and stop this conduct, and I would certainly look to them to do it.

I cannot sit here and believe that they would not perform the duty that they are—

Mr. CRAMER. I am very interested in that particular point because it involves a lot of discussion the subcommittee had; also it involves

the concept of title 4, page 7, of 6909, of where the communications facility has some responsibility.

Now, the bar association recommended some time ago, and apparently the communications facilities who testified agreed to their willingness to accept and the need for a provision, permitting them to cut off services or interrupt services on the request of local law enforcement officials without suffering any penalty.

Now, is there any objection to that provision?

Mr. MILLER. Oh, I beg your pardon, sir. I thought we were talking about radio. What you are talking about is the right. What burden should be placed on the communications common carrier, the A.T. & T., the Bell operating system, and the independent?

Mr. CRAMER. Right.

Mr. MILLER. The way we have worked out that in this proposed bill is that, if they furnish their facility with the intent that it shall be used to transmit gambling information, they, too, shall be liable for violation of this bill.

Now, they come back and say: "But in many instances, in many instances, we try to remove the man's telephone; and the State regulatory commission, having jurisdiction over furnishing of local telephone service, will not permit us to do so. Then we are in the position of being enjoined from removing his telephone, and we are violating this proposed bill."

Now, I say, in answer to that, that, even assuming it is covered—and I don't think there would be any violation by the telephone company under those circumstances because they are certainly not furnishing it intentionally—they are enjoined by a State regulatory body, or perhaps a court order, pursuant thereto, to continue this service.

The CHAIRMAN. There is no intent there. There is no intent; they are forced to do it.

Mr. MILLER. That is right. That is right. I don't think there is any real problem from the telephone company's standpoint on this bill.

Mr. CRAMER. Is there not a reluctance on the part of the telephone company to cut off services, even on request of local officials, unless they have specific legislative authority to do so? Is that not one of the basic problems in this area?

Mr. MILLER. This is a basic problem, Congressman. As I understand the position of the telephone company, they don't like to cut off service because it subjects them to damage suits, possibly, if they are doing it for the wrong man.

Now, my position is basically this. The telephone company is a regulated public utility. Now, if they cut off telephone service and do it in a case which is perhaps improper, then I think the man is entitled—the subscriber whose services have been terminated—is entitled to recover damages from the telephone company; and, since it is a regulated public utility, it is not really the telephone company itself that pays for those damages. It is the persons, like yourself and myself, who subscribe to the telephone service.

This concept of the public—any cost of furnishing telephone service is ultimately borne by the subscriber—

Mr. CRAMER. That does not get to the basic problem of how can a local law enforcement official get the services cut off when the services

are reluctant, the utilities are reluctant, to cut them off, because of the possible damages.

Mr. MILLER. Well, if I assume this is to be the case, without really knowing it, I think Western Union and A.T. & T. have already in their tariffs—and I assume this is true of local operating companies—they have in their tariffs a provision that they will not provide service to somebody unlawfully, who is using the service in violation of law.

Mr. CRAMER. And they testified they were reluctant to use that authority.

Mr. MILLER. Yes. I say this, sir: That the State regulatory body, if apprised of the fact that the telephone company is refusing to enforce its tariff, the State regulatory commission will then have authority to force the telephone company to abide by its tariff because those tariffs, basically, as a matter of law, the telephone company is bound by them, as much as I, the subscriber, and when you have a State regulatory commission having jurisdiction in the field, I think they can order it cut off.

The CHAIRMAN. Otherwise, you would have the Department of Justice, or some other branch, doing the job that must be done by the public service commissions of the various States.

Mr. MILLER. That is correct. That is my personal belief, sir.

The CHAIRMAN. They would not only be involved in betting and gambling, but you might stretch that to cover all cases where services should be refused.

Mr. CRAMER. Under present circumstances, the utility has to make the determination, and that is what they objected to and why they recommended the bar association's approach in addition to the chairman's approach. That they be given the permission to cut them off on request of the local law enforcement officials.

Would you object to that?

Mr. MILLER. The difficulty that I see with that approach is this: If you have a law enforcement official call up the head of the Bell operating company and say, "Cut off the telephone to banker B." Now, if the local—and the telephone company cuts it off, like that. Let's assume that banker B was completely innocent; that there was a case of mistaken identity.

Now, the telephone company is scot free. The local authority who called in and had them cut off is scot free. This fellow might be a practicing lawyer, and have suffered substantial damages; or a stockbroker, and suffered substantial damages, because he is deprived of his services.

Mr. CRAMER. How is the local authority scot free?

Mr. MILLER. I rather doubt you would have an action against the local authority if he were acting in pursuance of his job.

Mr. CRAMER. He has to have reasonable ground to believe the man is involved in an illegal act. If that is not the case, it should not be cut off. It is the same test that the communications facilities use today, administratively, in cutting service off—"reason to believe." That is, under the regulations, they can cut it off.

It is a question of whether the law enforcement official should impose that test, as a law enforcement authority, or whether the public utility—not as a law enforcement authority—should have to impose it.

Mr. MILLER. There, in practically every instance, the man in the administrative process, the man would have a chance to be heard.

Telephone service is such a valuable adjunct to a man's business in this day and age, I am always—and this is my personal belief—I am always leary of attempts to cut off a man like that, and then say, he cannot go any place to recover any damages he has suffered.

Mr. CRAMER. He can go against the sheriff for not having reason to believe. Why should he not do that, instead of suing the company? Why shouldn't the burden be where it properly should be?

Mr. MILLER. That would be a matter of local State law. In some States, it may be possible. In other cases, they may say, it is the municipal government.

Mr. CRAMER. How about the other side of the coin, where, as provided in title 4, page 7 of 6909, that the employees of the company have some responsibility to report to the law enforcement officials when they have reason to believe that the facilities are being used for illegal or gambling purposes?

Mr. MILLER. What page is that on?

Mr. CRAMER. On page 10; responsibility to report to the Department of Justice.

Mr. MILLER. I will say, in respect to this suggestion, that the burden be placed on the telephone employee himself, I don't have strong views on it one way or another, to be perfectly frank with you. I think in the past, we have had quite good cooperation from A.T. & T. on this matter and we now have, if we enact this other bill, you now have the question of intent, and I think if that bill is enacted, you will find the telephone companies are going to perhaps, go even further than they have in the past, and make certain that they, themselves, are notified of any possible activity which would be in violation of the statute.

So that the company can in turn, notify the Department of Justice.

In other words, I think that a natural concomitant of placing this burden of a possible criminal violation on the communications common carrier will be that they will see to it that people, responsible law enforcement officials, or the Department of Justice, are notified when they find the situations indicated.

Mr. CRAMER. If that is the case, what harm could be done by providing they have that duty in the substantive law?

Mr. MILLER. I don't have any strong feelings on it, Congressman, one way or another.

Mr. PEET. Mr. Miller, if you had the case of the telephone company cutting off service of an individual they have reason to believe was using the facility for the transmission of gambling information and that individual was subsequently brought to trial by the local jurisdiction, and found not guilty, do you believe the telephone company would be liable for damages for cutting off that service?

Mr. MILLER. That is a pretty hard question to answer, sir, without having all of the facts of the situation.

My guess is that probably the issue would be whether or not at an administrative hearing, you could prove that the man had been using the telephone illegally.

Now, the fact that you might not have been able to convict him criminally, I don't think would be res judicata on administrative process, because you have of course, different rules of evidence, and perhaps a more liberal approach to permitting evidence in. So I

don't think there would be any issue of *res judicata* there, criminal versus administrative.

Mr. PEET. I presume you would say the same thing if the local enforcement officers, after such cutoff, refused to institute action.

Mr. MILLER. Yes.

Mr. CRAMER. What administrative process?

How does an administrative process arise?

Who complains?

According to the evidence we had before the committee, the utilities did not indicate that they had, at any time, been brought before the Communications Commission or questioned on their cutoff or non-cutoff, on its use for illegal purposes. Yet they are being sued all over the place on the other side because they do it on occasion. You have been talking about administrative processes. Who initiates it? What administrative process is there to bring the issue before the Commission?

Mr. MILLER. That is a question that would be—we are talking about the local company. This is a question that would be determined by the laws of each one of the 50 States because the laws of these States vary. Now, conceivably—I don't know all of them, obviously—there may be State jurisdictions wherein there is no administrative proceeding to cover this type of thing we are talking about, cutting off of telephone, in which case, you would be relegated to your normal suit and probably come in and file a complaint, and ask for a temporary restraining order, a mandatory injunction that the service be restored.

Mr. CRAMER. Your testimony is to the effect that a representative of the FCC confirms it; that the FCC has the necessary authority to control any abuses?

Mr. MILLER. I was referring there, sir—this is where I misunderstood you.

I was referring there to the radio broadcasting and the television stations.

Now, there are two concepts. It is broken down in title 47, into radio broadcasting, and into common carrier service.

Now, recently, just now, we have been discussing common carrier service, which is the Bell System; your independent telephone service; general telephone service system.

Now, that is the common carrier I am referring to.

If you look over on the other side, you have the radio and television stations.

Now, it is in the latter case where I say the FCC certainly has the power to find that radio broadcasting or television station, which is operating as an adjunct for gambling, is not operating in the public interest. I cannot conceive—

Mr. CRAMER. Are you saying there is no Federal authority to regulate, through FCC, the telephone and telegraph use for illegal purposes?

Mr. MILLER. I am not. I am not saying that at all, sir; but as far as the common carriers go, you have to remember the dichotomy of the present system. You have an interstate communication network.

Now, that is American Telephone & Telegraph.

They are the long-lines department. They handle interstate telephone calls; lease lines running from one jurisdiction to another, and the like. That is the American Telephone & Telegraph.

Of course, you have Western Union. They are subject to the jurisdiction of the FCC. If you look at the definition in title 47 you will find however, that your local companies, like the Chesapeake & Ohio, here, and your operating companies, what they call them, which provide basically localized intrastate service, are primarily subject to the jurisdiction of a State regulatory body.

Now, the FCC would probably, if the A.T. & T. system, which applies to long-line interstate communications now, has in their tariff a provision that the facilities furnished by this common carrier shall not be used for a purpose illegal under such-and-such law, then, I think—I don't think there would be any problem there, that they could in effect, enforce that tariff.

Now, if the Commission felt that tariff was not satisfactory, I think the FCC has jurisdiction, as it does over rates, to require the A.T. & T. to put that tariff into effect.

I think they did it sometime ago on recording devices. I think the Commission took the lead and said, you put that tariff in effect.

Mr. CRAMER. But, as a matter of practice, in the past, the Commission has not had occasion to take jurisdiction over such matters and the objective of the Attorney General's—the previous Attorney General's approach, was perhaps to give them some jurisdiction by permitting them to withdraw services when a law-enforcement authority, Federal or local, made such a request. Then, if it is not done, I presume the authority has a right to complain, but as of today, as a matter of practice, as a practical matter, there has been nobody to complain to.

Mr. MILLER. If the proposed bill goes through, Congressman, there would be a penal sanction on the telephone company if we found that some of their facilities were being utilized in furtherance of illegal transmission of gambling information and if they continued on with this knowledge, and in effect, intentionally continued to provide this service to these crooks, I think then that there, they would violate the statute, and they would have this burden and there is then a burden being placed upon them not administratively, but a penal sanction, under the criminal code.

Mr. CRAMER. Only when complained against by the Department of Justice. The Federal law enforcement, not the local or State.

Mr. MILLER. I beg your pardon.

Mr. CRAMER. Only in instances where the Federal authorities complain; and you also have to apply standards of criminal intent in order to convict them under the statute, whereas, otherwise, the "reason to believe" on the part of the law-enforcement authority, would control.

Mr. MILLER. There is no question they are entitled to have the requirement of intent in the bill because as I pointed out before, they are liable to get into switches with some; well, you might get a court order enjoining them from taking this service out. We are not going to go in and file an indictment and try to hold them guilty for violating the statute because they are continuing to furnish the service and are in fact, required to, under that court order.

Mr. CRAMER. Do I understand that your testimony is, to summarize, you are not in favor of the previous Attorney General's recommenda-

tion, and the bar association's recommendation, that it be specifically provided that the telephone company has the authority, on request of either local, State, or Federal authorities, to cut off services on their request, suffering no penalty?

Mr. MILLER. That is my position, sir.

Mr. FOLEY. Mr. Miller, on page two of the bill, subsection (c), what is the purpose behind that provision?

Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, territory, possession, or the District of Columbia.

Mr. MILLER. That was just to make certain that we did not run across the Federal preemption problem.

Mr. FOLEY. It has been called to your attention, has it not, that Congress had in other statutes, devised particular language? Are you acquainted with that, such as in the bombing provision of the 1960 Civil Rights Act?

Mr. MILLER. Yes, I am.

Mr. FOLEY. Would you see any objection to substituting that language for the language proposed in this bill, H.R. 7039?

Mr. MILLER. None whatsoever. In fact, I think the language you suggest is preferable to the language we have here.

Mr. FOLEY. One final question, on page 2, line 9. The phrase: or information assisting in the placing of bets \* \* \*.

Now, is it your opinion that that language is sufficient to include the information referred to in the parlance of bookmaking, as the "line"?

Secondly, what is referred to as the "layoff"?

Mr. MILLER. Yes, as to both the line and the layoff. Actually, as far as the layoff goes, I think that would be covered under bets or wagers because the layoff man is in effect, making a bet with the bookie himself when he accepts the layoff.

Mr. PEET. I have one question, Mr. Chairman.

Mr. Miller, referring back to page 2, line 14 (b), concerning the exceptions for the transmission of information relating to sporting events and contests, were there any free speech constitutional considerations which prompted the inclusion of this provision in H.R. 7039?

Mr. MILLER. The constitutional issue obviously lurks beneath the surface of this bill. There is no question about that. However, by excluding—I mean, by making the actual transmission of bets unlawful, there is no violation of the first amendment there; but we wanted to make specifically sure that we would permit proper utilization of this information, for news reporting of sporting events. If we prohibited all newspapers in the country from carrying any information on sporting events—we might have a problem.

Mr. PEET. My question is directed at this point.

Is it possible that the exception may be broader than the prohibition in this sense? Suppose you have a gambling operation in which the individual receiving the gambling information across State lines, which would clearly be prohibited by this proposal, starts to send out a newsletter with 10 subscribers in his area. This newsletter contains information on sporting events, we will say, generally or particularly related to the sporting events on the information he receives.

Would that enable him to escape from the prohibitions of the statute?

Mr. MILLER. That is a problem that I am sure we are going to have to face and I think it is going to depend strictly on the facts of the entire operation. We would have to show that this was not legitimate utilization for news reporting purposes, but merely was an adjunct in furtherance of the transmission of gambling information.

Now, I will say this. The problem might not be difficult at all, if we can prove that the fellow who is putting out the sheet is also actually engaged in taking bets, if you will follow me. In other words, he will put out the sheets as a cover for his illegal betting activity.

Mr. PEET. Right.

Mr. MILLER. If we then can prove he is taking bets, the mere fact that he put out the sheet is not going to be any protection, because he violated the prohibition of the statute against transmitting bets or wagers over communication facilities.

Mr. PEET. But if he set up a third party to receive this information, which was then funneled down to the bookmaking operation, among others, there might be a substantial problem?

Mr. MILLER. It conceivably can cause difficulty. Yes. There is no question about it.

The CHAIRMAN. Suppose you continue your reading.

Mr. MILLER. H.R. 7039 carefully delineates the use of communication facilities sought to be prohibited. After considered study, the Department has concluded that it would be extremely difficult and fruitless to attempt to differentiate between the professional gambler and the social wagerer. There is no question but that our target in this area is the professional gambler. An exception for the so-called social wagerer, on the other hand, would leave a loophole through which the professional gambler could crawl by masquerading as a social wagerer. The statute would thereby be rendered totally ineffective. As in all our proposed legislation to combat syndicated criminal interests, the unquestioned and pressing need for the legislation must be balanced against the effect of the proposed bills on other basic individual rights. On balance, we believe that we have arrived at the proper formula.

I have addressed my prepared statement to only three of the bills before this committee for consideration. Of course, I endorse all the other bills in our program. In every instance, let me assure you that the Department of Justice will cooperate fully with the members of this subcommittee or its staff in considering any amendments or revisions to these bills thought necessary or desirable. Through such cooperation, I hope that we will be able to achieve our mutual goal—the prompt eradication of the organized crime syndicates whose illicit activities across State lines can no longer be tolerated.

I think that concludes my statement. That leaves the fugitive felon bill, for example, and the immunity section under the Hobbs Act, and Taft-Hartley. I don't know if the committee has any questions with respect to those bills.

Mr. FOLEY. During the course of the testimony on Friday, there was some question raised by some of the witnesses, particularly Mr. Woll, as to the actual need for the grant of immunity under 3021.

Mr. MILLER. Mr. Foley, I don't think there is any question but what there is a need. I read Mr. Woll's testimony and frankly, the problem is this:

Where you have a bribery situation, you have a very difficult problem obviously, because in the normal instance, you have two men in a room together, and money is being passed. There are no witnesses and it is very difficult to ever try to prove a violation of the Taft-Hartley Act under those circumstances.

Now, the reason for proposing an immunity bill was not only penal but also, we are looking at it prospectively.

In the first place, if a man pays the union leader or the union leader receives money in violation of the Taft-Hartley Act, there is no question but that is a very serious crime and should be punished, but I think there may be a tendency in the past, if this has been going on, to think: Well, if we get the employer and the labor person in the room together and the money will be passed, who is going to testify? If the employer is guilty, he won't testify. If the employee is guilty, he won't testify. If this immunity is on the books, then both the employer and the labor leader will recognize that either he or the other man is liable to be called before the grand jury and given immunity and forced to testify. I think you will have a very healthy effect.

The CHAIRMAN. He raised a little broader question.

He spoke of granting of immunity in a minor crime, and then in the course of that testimony, of which immunity was granted, it was disclosed a murder was committed. Therefore, the authority would be precluded from using that testimony, to base any prosecution for murder.

Mr. MILLER. As I recall it, sir, my memory is not too clear. I think he was talking about the Zelenko bill, when we got into that problem.

There, of course, that bill is a broad grant of general immunity which covers, I think, every Federal statute.

Now, the Department's position is that we should go slow on these immunity provisions, and that is where our immunity bill is limited to the two instances which have been specific. Anytime you grant a man immunity, there is no question; you are liable to let him go free on a very serious crime, but these immunity questions are handled very carefully in the Department when they do arise, and we make certain that we study the facts before we, in effect, grant a man immunity to make sure that we are not doing the wrong thing.

Mr. CRAMER. Mr. Chairman, may I clarify that?

The CHAIRMAN. That is your bill, Mr. Cramer. That is extending it to the Hobbs Act and the Taft-Hartley Act.

Mr. MILLER. That is right.

Mr. CRAMER. To clarify it, Mr. Chairman, as I recall his point, which I don't agree with, and you indicated apparently you didn't, either, that if, in fact, the man asked—he says it favors the employer; right? That was his position?

Mr. MILLER. Yes.

Mr. CRAMER. It discriminates against the employee because the employer is going to try to make it appear that the employee used extortion or force or what have you, to get him under the greater crime, and relieve him under the immunity section, of responsibility.

Now, is there any merit in that argument? It applies to both the employer and the employee.

Mr. MILLER. I don't think there is any merit at all to the claim of discrimination. We have one instance, for example, down in Texas where we granted immunity to the labor leader himself, and the result was an indictment of employers and of the employer companies. It was the International Brotherhood of Electrical Workers, down in Texas.

So, if he says that the statute has been used in a discriminatory manner, or would be used, I don't think that is the case. This particular immunity came up under an antitrust law, I think.

Mr. CRAMER. Could you cite the specifics of that for the record at this point, by memorandum, if the chairman wishes, for the information of the committee?

Mr. MILLER. All right, sir. Perhaps it would be better if I submitted it later by memorandum so I have the names and the dates.

The CHAIRMAN. That will be accepted.

(The memorandum is retained in the committee's files.)

Mr. CRAMER. Mr. Chairman.

The CHAIRMAN. Mr. Cramer?

Mr. CRAMER. I understand you are favorable to the Fugitive Felon Act, as proposed in 468 and other bills, by Mr. McCulloch and myself; likewise, you did not mention obstruction of justice as contained in title 10 on page 27, limited to (a) and (b) excluding the false information provision, which, as I understand it, the Department is reconsidering.

Mr. MILLER. Yes. At the present time, we do favor (a) and (b) and it was decided that what we would do would be, in effect, to transmit two bills, one which was (a) and (b) in it and one which has (c).

In other words, it would, in effect, be a separate bill so that any controversies involving subsection (c) would not imperil (a) and (b).

Mr. CRAMER. Don't you think it is important, though, in that you favor title 10, in effect, that the committee take action in the area where there is no controversy at this time, while these other bills are under consideration?

Mr. MILLER. That will be fine.

Mr. CRAMER. Could you submit, as a supplementary statement, your views with regard to title 10? Any corrective language or otherwise, that the Department might consider necessary?

Mr. MILLER. Yes.

Mr. CRAMER. Also, in H.R. 6909, is the recommendation, in title 3, relating to criminal expenditures. You are familiar with that; are you not?

Mr. MILLER. Yes, sir. I am.

Mr. CRAMER. And the Attorney General recommended it. I assume the Department of Justice retains its position favoring that provision?

Mr. MILLER. As a matter of fact, Congressman Cramer, that position is currently under study in the Department, and, right now, the question of unlawfully prohibiting deductions for certain things where a man is engaged in unlawful activity is now being considered by the Tax Division and, of course, by the Attorney General, and I would think it may be that we will have a supplemental suggestion on that. I don't know what the position is at this time.

The CHAIRMAN. I want to close in about 5 minutes, so be very brief.

Mr. PEET. Mr. Miller, I would like to address a few questions to you, about title I of H.R. 6909, page 1 of the bill.

Mr. MILLER. Yes.

Mr. PEET. Mr. Miller, are you familiar with the Wessel group which operated in the Department of Justice?

Mr. MILLER. Yes, I don't know the—

Mr. FOLEY. I just want to check, as to the form of H.R. 3221.

Would you have any objection if it was put into the existing immunity section, which I believe is section 3482 of title 18?

Mr. MILLER. None whatsoever. In fact, it might be preferable, as a matter of fact.

Mr. PEET. I asked the question, were you familiar with the Wessel group?

Mr. MILLER. Just vaguely.

Mr. PEET. It was a group set up in the Department of Justice several years ago to look into the problem of organized crime. Have you had the opportunity at all to study the report of the Wessel group?

Mr. MILLER. Yes, I did.

Mr. PEET. And I take it that you read that part of the report in which it states:

it is a fact, that nowhere in Government does there exist a permanent force capable of unifying actions of thousands of Federal, State, local, and special law enforcement all over the country. Nowhere is there even a clearinghouse to which the police or the prosecutors can turn for advice on where a criminal can be found.

Mr. Miller, what are you doing at the present time, to correct that situation?

The CHAIRMAN. I might say that the Department of Justice has an FBI which collates all this information and is a clearinghouse for all information concerning crime in this country. Am I correct?

Mr. MILLER. The FBI has a tremendous filing system and it has a tremendous repository of evidence and knowledge about criminal activity throughout the United States. There is no question about it.

The CHAIRMAN. As long as you are going to raise this question, I am going to try to cut this as short as possible.

On page 432 of the hearings before the subcommittee, of the Committee on Appropriations, House of Representatives, under date of—several dates—this Congress, this session, Mr. Rooney spoke on the special group on organized crime. Mr. Rooney is the chairman of the subcommittee of the Committee on Appropriations having to do with the Department of Justice.

Mr. ROONEY. Mr. Director, there has been some comment in the press recently and some reported statements by gentlemen named Wessel, Ogilvie, and company, who claim they did not receive cooperation from anyone, either the courts or the Congress or the FBI or any Government agency. Of course, as far as

Congress is concerned we can point out that this committee and the Congress were asked for \$200,000 for their superduper Dick Tracy outfit on two occasions, and they were not cut 5 cents. They got every nickel they asked for. We gave them the money with some misgiving because we thought that they were inexperienced and would not be able to get along with the old line, solid investigative agencies, such as the FBI. However, we did follow the recommendation of Attorney General Rogers.

Since it has been said in some of these articles that the FBI did not cooperate with them, I wonder if you would give us the benefit of your views, with regard to your cooperation with this—what was the name of it, Mr. Andretta?

Mr. ANDRETTA. It is not well known. Special Unit—

Mr. HOOVER. It was the Special Group on Organized Crime. I can say without fear of contradiction that we extended to Mr. Wessel who was in charge of the work of the special group with headquarters in New York—Mr. Goettel was a subordinate to Mr. Wessel—and to Mr. Ogilvie, who was in charge of the work in Chicago, complete cooperation that was proper and consistent with our jurisdiction. We had some problems with these gentlemen when they wanted to have assigned to them for their individual direction a substantial number of special agents without any specific target in mind, but to be used on "fishing expeditions."

Obviously, we have neither the manpower nor the time to waste on such speculative ventures. We do have an intensive criminal intelligence program of inquiring into the details of the operations of hoodlums and racketeers of the underworld. Such information was furnished to the Wessel special group. Notwithstanding the fact that Mr. Wessel himself has written me and expressed appreciation for the cooperation he received from this Bureau, and notwithstanding that Mr. Ogilvie expressed commendation in Chicago for the assistance he received from our Chicago office, they later resorted to unwarranted and unfair criticism.

My only conclusion is that some individuals look at "Mr. District Attorney" on TV too frequently and absorb some of the fantastic panaceas as to how to solve local crimes. As a practical matter it cannot be done that way.

The new Attorney General has recognized the fact that he has the facilities with which to meet the crime challenge by using the established units of the Department and the established investigative agencies of the Federal Government and coordinating their efforts with local law enforcement. Progress, I think, will be seen, but not right away. It cannot be done overnight.

So much for the Wessel group.

Mr. CRAMER. May I comment on that, at that point?

Page 127, of the same hearing, where the Attorney General was asking for additional money—\$540,000 for the purpose of setting up a special authority for organized crime and racketeers—a special section—the Attorney General was asking for that additional money, and Mr. Bow asked this question.

Mr. Bow. Mr. Foley, let us come back to this special group again, which disturbs me. Between the reorganization of last year, referred to in the record of last year, and your justifications here, can you tell us how much more authority the special group will have under the proposed plan with the additional \$540,00, and what they had under the reorganization of the old temporary group?

Mr. FOLEY. They will have additional authority, as I said, primarily to correlate this information and coordinate it among the agencies after it has been evaluated by it.

And I say, parenthetically, that is precisely what we are trying to do, statutorily, give the stature of legislative authority, under title 1.

Mr. FOLEY. We have now worked this plan out very carefully with the investigative agencies, and it has their approval. It will result in much closer liaison between the attorneys and the investigative agencies. Rather than their being the recipients of a report without any opportunity to discuss or suggest other avenues, we will be working very closely with the investigators.

Then, on page 128, I am particularly interested in this organized crime and racketeering section. Down toward the bottom of the page:

That is the one I am interested in at this time, not your overall. I just take it that what I have said is right, that this is simply a beefing up, and it is the same plan that was before us last year, except with the additional manpower, beefing it up, more money and more personnel.

Mr. FOLEY. Yes, sir.

Now, are there not several basic problems involved—and I am vitally interested in this area—are there not basic problems involved with this new beefed up group of elite attorneys and investigators, which is not a part of the FBI, are there not one, two, three basic problems involved?

(1) As the Wessel group pointed out, No. 1, there is no direction given to that group legislatively, is there? In other words, it is not directed to operate only in organized crime areas, is it?

The CHAIRMAN. Let me just interrupt. As long as we are going into this thing—I am sorry we got into it—but Mr. Cramer insists upon getting into it. Let us have your views, and if you can give us the authority of the views of the Department, as to this Bureau of Organized Crime, what is the Department's views on it? Let's cut this underbrush out. Let's get right to the very heart of this thing.

Mr. MILLER. All right, sir. I would be very happy to do that.

There is presently in the Department of Justice, in the Criminal Division, a section on organized crime. I don't know when that section was set up; maybe a year or two years ago.

Mr. CRAMER. It was set up pursuant to the Wessel group and following the Wessel group initiation.

Mr. MILLER. I am not sure that that is correct. You see, as I understand it, the Wessel group operated—they did not operate as a part of the Criminal Division, but they acted directly—

Mr. CRAMER. Under the Attorney General.

Mr. MILLER. Subject to the orders of the Attorney General.

Mr. CRAMER. Right.

Mr. MILLER. Now, the way organizationally, it is set up at the present time, the organized crime section is a part of the Criminal Division.

Now, this works out very logically because we find securities and exchange cases which are a part of the fraud section, of the criminal division, and the like, which are—the various sections work very closely together. You cannot isolate organized crime, because, as I say, you will find violation of the fraud statute; you will find violation of securities and exchange statutes; the tax statutes, and the like.

Mr. CRAMER. But it does need special attention, which you are now giving it. We are asking Congress to give you money to implement this special organized crime group. Is that not correct?

Mr. MILLER. There is no question about it. The funds we requested were to increase the personnel of the organized crime section. Now, the reason we need these funds is this.

The Attorney General has concluded, and I think he is eminently correct, that we can do the job with what we have now, given addi-

tional funds for this reason. The organized crime section, as expanded—and it has already come to pass—is working closely with investigatory agencies, including the FBI and take the alcohol tax unit; and your tax revenue inspectors. What happens? They go out into the field. They talk to the special agent in charge of the FBI and they have a joint meeting of the investigative agencies. We get the information in, analyze it, and go back out and talk to them—where the attorneys are, out on the scenes, suggesting and coordinating investigations.

Now, this is right under it—what we are doing now. We are doing it with the present authority, but it is, I think, an expansion of a basic concept, that you have to have some place where this information shall be—we get reports from the FBI; from narcotics; from the Internal Revenue Service, and the attorneys in the organized crime section correlate and when they find they are at the point where it is desirable, they will go out into the field and they have these joint meetings, attended by attorneys from the organized crime section, and the various investigatory agencies out in the field. It is working out. I am hopeful it is going to work out very well.

Mr. CRAMER. Then they are correlating that information at the present time, under your direction, right?

Mr. MILLER. Yes.

Mr. CRAMER. What is the objection to giving this authority legislative stature?

The CHAIRMAN. Do you need it?

Mr. MILLER. This is my basic problem, Congressman. If we are doing it now, I don't see that it needs the imprimatur of legislative action.

Mr. CRAMER. Here is some reason. Suppose that some agency refuses to cooperate and give you the information which they are instructed to do under title 1.

What recourse do you have?

How can you correlate the information, when you cannot get it?

Mr. MILLER. I will say this. We have not had that problem.

The CHAIRMAN. It would be a very simple matter. You go to the White House and you say to the President, "Mr. Secretary of this department or this branch of the Government refused to give the information. We need this information. We want you, Mr. President, to help us out under the circumstances."

Mr. MILLER. That is correct.

The CHAIRMAN. That is all you have to do.

I don't think you need to reach that stage.

I think there would be the utmost cooperation.

Mr. PEET. In the appropriations hearings, Mr. Hoover was asked this very question, concerning the operations of the Wessel group. He said, "We gave it every help and assistance proper and consistent with our jurisdiction," which indicated there might be some limitation on the jurisdiction of the FBI on the type of information the Wessel group got.

Mr. MILLER. There is no argument that the FBI's jurisdiction is limited by statute. There is no question about that. That is why it is necessary to have a place to coordinate this information and that is what we are doing now.

Mr. CRAMER. What information? There is no limitation on how this group can be used. For instance, you can use this elite corps for any purpose the Attorney General sees fit. For instance, you could use them in these "freedom rider" cases at the present time. There is no direction to the group. The Attorney General can use them for any reason he wants. Is that not true?

Mr. MILLER. As a practical matter, let me say this: As a practical matter, they are not going to be used to investigate the Freedom Rider aspect because they are up to their ears in work right now.

Mr. CRAMER. They could be used for that purpose.

Mr. MILLER. I suppose any attorney in the Department of Justice could.

The CHAIRMAN. Those employees of this so-called unit could be used for the marshals being used down South.

Mr. CRAMER. They could be used for any purpose the Attorney General wishes. There is no legislative circumscription or description of their duties at present, and the Appropriations Committee did not write descriptive language as to their duties in their appropriation bill. There is no question about that.

The CHAIRMAN. How about the FBI and the Department of Justice?

Mr. TOLL. Is there a separate law relating to the Antitrust Department of the Department of Justice?

Mr. MILLER. I don't think so. I don't think—I am not familiar with any statute which defines what duties a specific division or attorney might do.

Now, as far as I know, the Congress appropriates money; the Attorney General has certain statutes that have to be enforced.

Mr. CRAMER. Including the Civil Rights Act.

Mr. MILLER. Certainly. There is a Civil Rights Division. Congress passed a statute, or did they? I have forgotten. They passed the Civil Rights Act.

Mr. CRAMER. The second question is this: If a local law enforcement authority thinks Mr. X is involved in syndicated gambling operations, and has possibly committed a local crime, but he needs additional substantiating information, such as, suppose he commits a murder and travels in interstate commerce. What authority does Justice have today, to take this very correlated information you are talking about, and making it available to that local law enforcement authority?

Mr. MILLER. Let me say this. The FBI or the Department of Justice, where it is feasible, will cooperate with local law enforcement officials.

Mr. CRAMER. By investigations, but not by providing information on the individual involved.

Mr. MILLER. If it is called upon by the circumstances, the information, provided it is not from a confidential informant, may well be provided.

Mr. CRAMER. As a matter of practice, it is not provided?

Mr. MILLER. There is one difficulty. As I say, I hate to spread it on the record here but let's put the cards on the table.

There are some police departments in this country, that the Department of Justice does not feel it should—

Mr. CRAMER. I grant you that.

Mr. MILLER (continuing). Should cooperate.

Mr. CRAMER. I am disturbed about them, and the fact that they are not willing to do anything about organized crime; as disturbed as the Department of Justice.

There is protective language in the bill however, to give to the Department of Justice the discretion to decide in what instances information should be given; precisely the type of discretion you say is exercised now.

No. 1. There is no present statutory authority for the Attorney General to make this information, under his discretion, available, to law enforcement authorities even involving organized crime. There is no legislative authority requiring other agencies of which there are many, to make that information available on Mr. X, whom Justice may be looking into, to this elite group. There is no requirement that this information be made available to the Attorney General, and there is no limitation on how this elite group, which is now being "beefed up," this previously existing group, there is no description as to what its duties shall be. Why not clearly set this out by statute, and give it legislative stature, if this group is to do the job assigned it effectively?

This is the same as the proposal for the elevation of the Committee on Government Contracts to commission status, for instance.

Mr. MILLER. Congressman Cramer, the very thing that is, I think, embodied in this proposal in 6909, the Office on Syndicated Crime, is now underway and being accomplished. Now, on that basis, I don't see that legislation is necessary, under these circumstances. Now, I can assure you that if the Attorney General finds that, because he does not have the authority or the power to proceed with his present plan, that he will be right down requesting that authority.

I don't think there is any doubt in anybody's mind about that fact.

Now, as far as the limitation, as you say, by legislation, on what the attorneys in the Department of Justice are to do, as I say, there may be some. I don't know; but as a practical matter, the organizational setup is such, in your Civil Rights Division, in your Tax Division, in your Antitrust Division, in your Internal Security Division, and in the Criminal Division, that certain statutes are assigned to the particular divisions for enforcement, and that these statutes then in turn are broken down so that members of the various sections do handle them.

So I don't think it requires legislative action to do that because when Congress passes the statute, it in effect, expects the Department of Justice to enforce it and I don't believe that there is any tag end on the end of a criminal statute that the Criminal Division will enforce this, or that the Antitrust Division will enforce this, or the Tax Division will enforce this.

The CHAIRMAN. As to the dissemination of information, I am reading again from the hearings before the subcommittee of the Committee of Appropriations, the Department of Justice, page 412. The testimony of Mr. Hoover again, under the heading, "Dissemination of criminal information."

Cooperation, which is the backbone of effective law enforcement, is the leading weapon, in my estimation, against crime. As a result of the high degree of cooperation in American law enforcement, there is an extensive exchange of criminal intelligence data between the FBI and other law enforcement agencies—Federal, State, and local—on a day-to-day basis.

During the first 7 months of the fiscal year 1961, the FBI disseminated 56,531 items of criminal information.

Of this total of 56,531 items which were disseminated, 36,372 items were disseminated to local and State law enforcement agencies and 20,159 items were sent to other Federal investigative agencies.

I stress this cooperative effort because there is a very small group in this country which is campaigning for the formation of a central clearinghouse for the dissemination of criminal information. As can be seen an effective program is in operation today.

The FBI obtains a tremendous reservoir of data relating to criminal activities through daily contact with individuals from all walks of life, including confidential informants, sources of information, complainants, victims in criminal cases, and the like. Information pertaining to other law enforcement agencies is promptly disseminated, thus enabling local authorities to handle their cases at the local level. Similarly, thousands of items of information pertinent to FBI investigations are received each month from police officers and other Federal agencies throughout the country.

I could read more. I don't need to belabor the point. The decor of the FBI is apparently opposed to this theory. The Department of Justice is opposed to it. I don't think we could make much headway with a provision like this, with that kind of opposition.

Mr. CRAMER. They set up, Mr. Chairman, the same type agency in the Department already. In reading Mr. Hoover's further statement on page 413, which indicates the necessity, he says:

I also want to point out that we make no attempt to evaluate the information which we disseminate—

which this elite group would have the power and authority to do.

We make no "followup" to determine what action is taken with respect to alleged violations, \* \* \*.

This is the sort of thing that the unit could effectively help law enforcement officials with.

The CHAIRMAN. The Criminal Division evaluates the information received from the FBI. Am I right, Mr. Miller?

Mr. MILLER. That is correct. I think that is what Mr. Hoover is referring to in that statement, is information which is made available to State and local law enforcement officials. Is that not correct? And if so, the Criminal Division would have no jurisdiction to go in and evaluate and follow it through because it would be a matter of violations of State and local law.

Mr. CRAMER. Is that not exactly what you need with regard to organized crime, and what this elite group should do, is evaluate all this correlated information with regard to Mr. X and make it available to the local law enforcement official? Is that not exactly what this new group is going to be doing?

Mr. MILLER. The group will be correlating and analyzing the information from the various investigative agencies. Now, after all, we are enforcing Federal and criminal statutes. That is the primary function of the Department of Justice, to enforce Federal criminal statutes. Now, in this information, we would ascertain, Was there indeed a violation of State law? I don't think there is any question but what that information would be available to the local law enforcement officials, but Congressman Cramer—and I don't think you even mean to suggest it; I just want it clear—the Department of Justice, through this Criminal Division, cannot, and I repeat, cannot possibly attempt to enforce all of the laws of the various States and local jurisdictions; nor do we indeed want that task. It would be an over-

whelming task. Thus, it is a question of cooperation, in working in conjunction with these State and local people. That is what we do.

Mr. CRAMER. There is nothing in title 1 that would change your present *modus operandi*, so far as acknowledging or acquiescing to local requests. It carries out precisely the same function but it would give it legislative stature.

In other words, what is being said is, it is all right to set it up but it is not all right to give it legislative stature, to prescribe specifically what its responsibilities shall be, to permit it to disseminate information to local law enforcement authorities; to require that other agencies cooperate with it. Frankly, I cannot follow your reasoning, why it is all right to do it, but not give it legislative stature.

The CHAIRMAN. I can follow it. I don't see any need for it and furthermore, it will be well not to take away the flexibility that now exists. If you are going to put this thing in a straitjacket, then in some future time, you might find some new set of facts that the Department cannot meet, because of this type of legislation.

Now, it is well to leave it fluid the way you have it. A branch has been set up. That is, the FBI correlates all this and disseminates it; gives it to the proper parties; gives it to you, as head of the Criminal Division; gives it to the State enforcement agencies.

I cannot conceive why you should want any more.

Mr. MILLER. I think you are eminently correct, Mr. Chairman.

I would like to point out one thing, Congressman Cramer. When you say it would not change the present setup, your bill, just in the first page, foresees there would be a special assistant to the Attorney General, who would head up the Organized Crime Division.

Now, this is a change from the way it currently is being operated. This was, as I understand it, the concept on which the Wessel group operated. They operated directly out of the Attorney General's Office.

Now, the present concept is that, because of the various crimes which are committed by organized criminals, that there should be in the Criminal Division, this cross-pollination among the Fraud Section, the Immigration-Deportation Sections, and the like. That is one change which your bill would make right off the bat.

Mr. CRAMER. That is organizational. As far as I am concerned, that is not the crucial point. The crucial point is, what the function of such a group shall be; whether under the direct supervision of the Attorney General or indirectly, through you, under the direction of the Attorney General.

So I don't think that particular aspect is of any real significance, but it is of significance that you are here testifying in opposition to giving legislative stature to what is already being done administratively. In my opinion, title 1 would put teeth in what you are doing.

The CHAIRMAN. I want to say, there is no crime in what you are doing. In other words, you have a perfect right to approve what is being done.

Now, it does not have to be written into statute.

Mr. McCULLOCH. I would like to ask a couple of questions, Mr. Miller.

Do you have, in writing, just what the mission of this new elite group is to be?

Mr. MILLER. Well, Congressman, I would prefer we did not call it an elite group, sir.

Mr. McCULLOCH. I will take your suggestion, because I have no desire to reflect on it.

Just what is the mission of this Organized Crime and Antiracketeering Section of the Justice Department to consist of?

Mr. MILLER. There is no written policy outlining the scope of the function.

Mr. McCULLOCH. Might I interrupt there. Do you propose to reduce to writing the mission of this newly created group which will be given new responsibilities and new fields?

Mr. MILLER. I have considered it. As a matter of fact, I have not arrived at a conclusion whether I should or not. It might be a very good idea.

Mr. McCULLOCH. Let me say this. I think, and I suggest to you, in a constructive, friendly way, that is a thing which I think should be done, and which will serve a useful purpose, and as a part of that suggestion, I would like to also ask you, how you propose to accomplish this mission. There can be no harm come from following this suggestion, and there might be great good come from it.

The CHAIRMAN. I think the suggestion is a good one, Mr. Miller. You might, of course, in reasonable time, enlighten this committee on answering these questions.

Mr. MILLER. Yes, sir.

Mr. McCULLOCH. Mr. Chairman, with the consent of the committee, you may use the official name of this section, in the initial question that I asked.

Mr. TOLL. Would Mr. McCulloch suggest confining them to the area in which they put the definition?

Mr. McCULLOCH. Not necessarily. I think there is great flexibility in the Department of Justice, but I think, before the Congress of the United States provides additional funds for this purpose, that we ought to know, within certain limits, just what the mission is to be, and how, generally, we propose to accomplish the mission.

The CHAIRMAN. I would suggest also that you would naturally, I presume you would naturally confer with your other colleagues in the Department of Justice on this matter, including the Attorney General, and the FBI.

Mr. MILLER. Oh, certainly.

Mr. PEET. Mr. Miller, on page 3 of Mr. Cramer's bill, title 1, syndicated crime is defined on line 5 as—

substantial concerted activities in or affecting interstate or foreign commerce.

Would the new group that you are setting up in the Department of Justice have as broad authority to look into, in an intelligence sense, the activities of syndicated crime, or would this new group be hindered by the limitations, jurisdictionally, which presently exist, with regard to Federal law enforcement authority?

Mr. MILLER. Well, let me make one thing very clear. These attorneys in the Organized Crime Section are attorneys, and not investigators. So when you refer to investigative jurisdictional limits, I assume you are talking about—

Mr. PEET. Intelligence. This is an intelligence proposal, is it not, to set up an intelligence unit within the Department of Justice, not

necessarily an investigative unit? Its purpose is to "assemble, correlate, and evaluate" intelligence.

I am wondering would there be any limitation as a result of the limited Federal authority which presently exists, upon the intelligence functions that your group could perform, and if you answer in the negative could you explain why such a limitation would not be there?

Mr. MILLER. I cannot think of any limitation; in other words, when you talk about intelligence, you are basically talking, as I understand it, about information and facts which have been gathered by investigative agencies, starting with the FBI.

The CHAIRMAN. I want to terminate the proceeding this morning. I want to ask a couple of questions, and it is getting late. I am going to let you submit the answers later. These are the questions:

In the Attorney General's book, "The Enemy Within," he says that gangsters and hoodlums have taken over the coin machine business in the United States.

These are the questions. I will give you a copy of them.

Do your investigations indicate that this situation still exists?

Secondly, how do they operate?

Is there anything that Federal law enforcement officers can do about it in existing law?

Would the proposed legislation before the committee assist in doing something about gansters that are in this coin-operated-machine business?

Will you take those questions and answer them in due course? I want to terminate these hearings.

Mr. TOLL. Is this the end of all hearings on this crime package?

The CHAIRMAN. No. Not the end of all hearings. What do you mean?

Mr. TOLL. I was told yesterday a statement is coming in the mail in my office, to be introduced.

The CHAIRMAN. The record will be held open for a reasonable length of time, and if necessary, Mr. McCulloch suggests 2 weeks. We might leave it open indefinitely. We are in no hurry. We will put your statement, your complete statement, in the record, then.

Mr. MILLER. That would be fine.

The CHAIRMAN. There are some statements to be put in the record a little later on. The American Bar Association; the American Civil Liberties Union wants to put some statements in. The record will be kept open for that purpose. Meanwhile, you are going to respond to the inquiry offered you by Congressman McCulloch, about giving answers to these questions.

Mr. MILLER. Yes, sir.

Mr. CRAMER. Is this the last day of hearings on these bills?

The CHAIRMAN. It is proposed that this be the last day. If anything extraordinary happens, why, it would be reopened.

Mr. CRAMER. A lot has been said, Mr. Chairman, about Mr. Wessel's report; yet Mr. Wessel was not invited to testify, as I understand it. I thought his report was most helpful and well reasoned, and a lot of effort went into it, and a substantial amount of the taxpayers' money went into it, and I feel, Mr. Chairman, that it would be extremely valuable to have Mr. Wessel before this committee to testify with regard to the organized crime problem.

The CHAIRMAN. The record will be held open, and the hearing need not be deemed closed. It will be subject to the call of the Chair.

Mr. McCulloch?

Mr. McCULLOCH. Mr. Miller, I have one question. Some information came to this committee to the effect that the Department of Internal Revenue was not, upon request of local law enforcement officers, furnishing the names and addresses of applicants for gambling stamps that was made in this particular director's district.

Do you know whether or not that is true?

Mr. MILLER. I am quite positive that those are matters of public record. They are a public record, and are open to inspection by the public. I am just informed that they do not respond to telephone inquiries, apparently for administrative reasons.

Mr. McCULLOCH. Do they respond to written requests, for names?

Mr. MILLER. Apparently not, sir.

Mr. McCULLOCH. Do you know, or does your assistant know, whether that is prohibited by law or regulation?

Mr. PETERSON. No, sir. I don't believe it is prohibited by regulation.

Mr. McCULLOCH. Will you identify yourself?

Mr. PETERSON. Henry Peterson, Assistant Chief of the Organized Crime Section.

I don't believe it is prohibited by regulation or statute. I think it is simply a question of administrative procedure, and making certain that the information is disclosed to those who have a real interest in it.

Mr. McCULLOCH. Yes. Well, Mr. Chairman, I would like to again say that there are counties in the United States with a population of less than 25,000. There are at least three in the State of Ohio with a population of less than that figure. Most, if not all, of those counties have a single prosecuting law enforcement officer; a prosecuting attorney. Many times, the District Director of Internal Revenue's office is from 75 to 250 miles from the county seat where that single law enforcement official holds forth. I would suggest to the chairman and to the Justice Department, that this regulation and this administrative procedure be reconsidered so that these lone law enforcement officers, who in many instances, furthermore, make \$5,000 or less a year, can get this information upon formal written request, without traveling in person from 75 to 500 miles.

Mr. CRAMER. Will the gentleman yield?

Mr. McCULLOCH. Yes.

Mr. CRAMER. You say you are the Assistant Chief of the Organized Crime Section?

Mr. PETERSON. Yes, sir.

Mr. CRAMER. That is this new group setup, is it?

Mr. PETERSON. It is not the new group setup. I have been Assistant Chief—

Mr. CRAMER. A continuation of this group?

Mr. PETERSON. This group has been in existence for about 7 years.

Mr. CRAMER. Who is the Chief?

Mr. PETERSON. Edwyn Silberling, at the present time.

Mr. CRAMER. Edwyn Silberling?

Mr. PETERSON. Yes, sir.

Mr. CRAMER. He is the present Chief of that group?

Mr. PETERSON. Yes, sir.

Mr. CRAMER. You are the assistant?

Mr. PETERSON. Yes, sir.

Mr. CRAMER. That is under the jurisdiction of Mr. Miller?

Mr. PETERSON. It is under the jurisdiction of Mr. Miller. Yes, sir.

Mr. CRAMER. You are functioning for how long?

Mr. PETERSON. Personally?

Mr. CRAMER. No. The bureau, the division you are in.

Mr. PETERSON. This group?

Mr. CRAMER. Section.

Mr. PETERSON. This group has been in existence prior to the formation of the Wessel group, which I believe was in the spring of 1958.

The CHAIRMAN. Thank you very much.

Mr. MILLER. Thank you, gentlemen.

(The subcommittee was adjourned, subject to the call of the Chair.)

STATEMENT BY ARTHUR H. CHEISTY, CHAIRMAN, THE COMMITTEE ON CRIMINAL COURTS, LAW AND PROCEDURE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK WITH REGARD TO AMENDMENTS TO VARIOUS BILLS TO COMBAT ORGANIZED CRIME, MAY 31, 1961

*H.R. 3063, H.R. 468—Extension of Fugitive Felon Act—Disapproved*

These are identical bills and seek to amend the Fugitive Felon Act, section 1073 of title 18, by extending the crimes covered by the act.

The present law makes it a crime for a person to travel across State lines with intent to avoid prosecution for certain specified crimes under the laws of the place from which he flees. Presently, the law provides for the operation of this statute in the crimes of murder, kidnaping, burglary, robbery, mayhem, rape, assault with dangerous weapon, arson punishable as a felony, or extortion accompanied by threats of violence.

The amendment seeks to eliminate this enumeration of crimes and provide for the operation of the statute where there is a crime or an attempt to commit a crime punishable by death or imprisonment for a term exceeding 1 year under the laws of the place whence the felon flees.

The committee disapproves these bills. The committee believes in the efficacy of the Fugitive Felon Act and also in the idea behind the amendment. However, the committee feels that these bills are far too broad in scope. The penal laws of the several States are varied and in some cases provide that certain acts which, by most penal standards, should not be considered felonies requiring imprisonment for over a year, are, in fact, so designated as felonies. The committee does not feel that all acts which might call for imprisonment for over a year under State laws should properly come within the purview of the Fugitive Felon Act.

In this day and age when there is an increase in syndicated crime across the country, it may be well to extend the list of those crimes which come within the purview of section 1073. The committee feels, however, that this should be done by extending the enumeration of crimes rather than by the wholesale method of including any crime for which the punishment exceeds 1 year.

*H.R. 3246, H.R. 6571—Prohibition of interstate transportation of wagering paraphernalia—Disapproved*

These bills are substantially the same and seek to provide means for the Federal Government to combat interstate crime by prohibiting interstate transportation of wagering paraphernalia. The bills would add a new section 1952 to title 18.

H.R. 3246 should be disapproved since it does not provide that the acts constituting the crime must be done knowingly. Without the requirement that the acts must be committed knowingly it is doubtful the bill would be upheld in the courts.

H.R. 6571 is more artistically drafted and more precise than H.R. 3246, but should probably be more specific in spelling out that the person shipping the paraphernalia intended that such paraphernalia be used in violation of the law. For example, it would appear that "similar game" might include bingo and, therefore, under the bill as drafted, could apply to a person taking paraphernalia used in a bingo game from New York to New Jersey. Obviously, it is not

intended that such act, if innocent, come within the purview of the statute, but as drawn such act would be covered.

The committee feels that the idea behind this bill is a good one, that is, jurisdiction of the Federal Government to get at the heart of gambling by prohibiting interstate transportation of paraphernalia used therein, but the bill must be drawn so as to cover only those persons who transport gambling paraphernalia in interstate commerce with an evil intent.

*H.R. 3022—Prevention of interstate transmission of gambling information—Disapproved*

This bill would amend section 1081 of title 18 and add three new sections, 1084, 1085, and 1086, with a view to assisting in the prevention of interstate transmission of gambling information.

The aim of the bill apparently is to strike at the heart of gambling by preventing interstate transmission of gambling information, but the committee feels that the bill is much too broad and perhaps does not really accomplish what is sought to be accomplished. The bill requires the filing of affidavits by those who have transmitted or intend to transmit gambling information in interstate commerce. Such a requirement is impractical and would be difficult to enforce. One of the new sections makes it a crime to file a false or misleading affidavit, without providing that the affidavit be "knowingly" false and misleading. "Misleading" is a vague term at best and it is at least necessary to provide that the affidavit be "knowingly misleading."

One of the purposes of the bill is to put the burden on the common carrier to report the use of transmission lines for gambling information. This section is too vague, however, and would impose too much of a burden on the employees of a common carrier. The concept of imposing criminal liability upon a common carrier under a phrase "has reason to believe" seems to the committee to be too broad in scope.

*H.R. 6573—Prevention of interstate transmission of bets, etc.—Disapproved*

This bill, as does H.R. 3022, seeks to amend section 1081 of title 18, and adds a new section 1084 with a view to preventing transmission of bets, wagers, and other gambling information.

This bill is aimed at prohibiting transmission of gambling information across State lines and there is no doubt that, in order to get at the root of gambling, there should be such a prohibition. The gambling syndicates must use modern methods to transmit wagering information and if this can be stopped, gambling syndicates will be dealt a serious blow.

While the purpose of the bill is good, the committee feels that the phrase "knowingly uses such facility for such transmission" is too broad in scope. Conceivably, newspapers using such facilities in the reporting of various sports events or the casual bettor placing a wager by means of an interstate telephone call would be covered. The bill is aimed at covering professional gamblers engaged in syndicate operation and should be drafted so as to cover only this type of operation.

*H.R. 5230—Extension of conspiracy statutes—Disapproved*

This bill seeks to extend the conspiracy laws by making it a crime to conspire to commit an "organized crime offense," that is, violation of State laws relating to gambling, narcotics, extortion, and other serious offenses. This bill would permit the Federal prosecutor to extend his jurisdiction where some aspect of a conspiracy to "commit an organized crime offense" was carried on interstate. This is an unusual bill and the committee is not immediately convinced that there is any great need for it at present. Presumably the purpose of the bill is to permit the Federal authorities to assist in local law enforcement; the draftsmanship of the bill, however, fails to solve many of the problems raised by such a bill.

The vast expansion of the Federal prosecutor's jurisdiction should not be effected without a demonstrated need for such expansion and without a most carefully drawn bill.

*H.R. 1246—Grant of immunity in cases involving interstate commerce—Disapproved*

This bill would amend section 3486 of title 18 and would extend the right of the Federal prosecutor to grant immunity in any case which affects interstate or foreign commerce.

Without question, one of the stumbling blocks in the battle against organized crime is the inability of the Federal prosecutor to compel testimony by a grant

of immunity. Many State laws provide for such immunity, but under the Federal laws immunity may be granted only in cases involving certain crimes, such as espionage and narcotics. There are, of course, a number of administrative acts which provide for a grant of immunity but these cannot be effectively utilized in combating organized crime. The committee feels it is in order to extend the right of a Federal prosecutor to grant immunity in other types of criminal cases. However, this particular bill is the "shotgun" approach to the problem and is too broad in application. The best way to accomplish the desired end would be to enumerate those crimes in which immunity may be granted.

The committee feels, too, that at such time as the immunity statute is broadened, there should be a more precise definition of the phrase "in any court" where that phrase is used to provide that a witness who is granted immunity shall not thereafter be prosecuted. It would appear under recent cases that the immunity granted includes State courts, but any doubt could be dispelled by appropriate statutory language.

*H.R. 3021—Grant of immunity in racketeering cases—Approved*

This bill would permit the Federal prosecutor to grant immunity in cases involving violations of section 1951 which covers racketeering and in certain cases under the Taft-Hartley Act.

The committee feels this is a logical and necessary extension of the Federal prosecutor's right to grant immunity in order to secure more effective enforcement under these two statutes.

In reporting on H.R. 1246, above, the committee pointed out the need for a more precise definition of "in any court." The committee feels that a more precise definition is advisable but does not withhold approval of H.R. 3021 for that reason.

*H.R. 6572.—Prohibition of travel in aid of racketeering enterprises—Disapproved*

This bill would add a new section 1952 to title 18 to prohibit travel across State lines in aid of "any unlawful activity" which is defined as "any business enterprise involving gambling, liquor, narcotics, or prostitution offenses" or "extortion or bribery" in violation of State or Federal laws.

The bill is desirable in purpose but as drafted is too broad in scope. Insofar as the bill prohibits interstate travel to distribute the proceeds or to commit a crime of violence in furtherance of extortion or bribery, it is fairly definite. The introduction of the term "business enterprise" in defining unlawful activity would tend to render enforcement difficult. "Business enterprise" as it is used is insufficiently precise, and in any bill which introduces a new concept of enforcement there should be greater definition.

STATEMENT OF AMERICAN CIVIL LIBERTIES UNION, NEW YORK, N.Y., ON ANTI-RACKETEERING BILLS

The American Civil Liberties Union is a private, nonpartisan, nonprofit membership corporation which devotes its entire resources to the protection of the Bill of Rights. Our comment on the antiracketeering bills now before the committee is made within our special competency, defense of civil liberties. We of course support all legislative and law enforcement efforts directed toward detecting and prosecuting those who are engaged in criminal activity, for we know that freedom cannot flourish in a society where crime is unchecked. But we are equally convinced that efforts to rout out crime should not resort to unconstitutional methods to achieve the desired goal. We urge that due process of law not be circumvented, nor freedom of speech or of the press be impaired, in the campaign against racketeering. If shortcuts are taken around these constitutional freedoms, we are weakening the democratic structure we seek to protect. We would be the losers in the long run.

Of the several bills before the committee, we see no objections on civil liberties grounds to H.R. 468, H.R. 3023, and H.R. 6572. We have noted certain defects in H.R. 6573, H.R. 3246, and H.R. 6571 which we believe can be repaired by simple amendment. On the other hand, we have found H.R. 1246, H.R. 3021, and H.R. 5230 to be so violative of civil liberties as to urge that they not be adopted. Our specific views on these six bills are set forth below.

*H.R. 1246 and H.R. 3021*

The purpose of these bills is to provide for grants of immunity from prosecution to compel persons to testify with respect to (1) "any matter which affects

interstate or foreign commerce or the free flow thereof" [H.R. 1246], and (2) interference with commerce by threats or violence, and corrupt labor management practices [H.R. 3021]. We are opposed to both bills on the ground that they undermine the fifth amendment privilege against self-incrimination.

There is little doubt that immunity legislation of this kind is constitutional (*Brown v. Walter*, 161 U.S. 591; *Ullman v. United States*, 350 U.S. 422). There is great doubt, however, whether it is wise, for as Mr. Justice Frankfurter himself said in the Court's opinion in *Ullman*, "This command of the fifth amendment ('nor shall any person \* \* \* be compelled in any criminal case to be a witness against himself \* \* \*') registers an important advance in the development of our liberty—one of the great landmarks in man's struggle to make himself civilized." Time has not shown that protection from the evils against which the safeguard was directed is needless or unwarranted" (at 426).

During the course of debate in Congress on the 1954 Immunity Act, held constitutional in *Ullman*, the ACLU made the following statement in opposition to the bill's passage:

"The ACLU opposed this law when it was first proposed, because we believe it was violative of civil liberties, and we are still firmly opposed to it. Our objections are based on the uncertain protection and vague scope of the immunity grant, the self-degradation suffered by witnesses who are required to testify about past activities—which may not be criminal—and that information about Communist activities—the main purpose of the law—is already available \* \* \*.

"The ACLU considers the immunity law as unwise because we believe that the privilege against self-incrimination should also include protection against self-degradation. While the courts today might not accept this view, we believe that the past ruling of judges of various courts should still apply, that people should be protected against giving self-degrading testimony.

"Our democratic system is based on the concept of fairness and decent treatment of the individual, and the full power of government should not be brought to bear to force a person to condemn himself by his own words. The fifth amendment protection against self-incrimination is rooted in the historical struggle of men to maintain their political beliefs despite Government efforts to force confessions which would result in criminal prosecutions. And even if persons testifying today do not disclose criminal activities, noncriminal disclosures about Communist matters could subject them to severe punishment."

Although that statement was cast in the context of the 1954 act which was confined to matters of national security, its general message applies with equal force to racketeering, the evil now asserted to warrant further intrusion into constitutionally protected rights.

Slowly but surely the privilege against self-incrimination is being whittled away by legislative action. In such disparate areas, for example, as narcotics offenses [18 U.S.C. 1406] and hearings before the Federal Deposit Insurance Corporation [12 U.S.C. 1820], among many others, Congress has provided for grants of immunity in derogation of the privilege.

Now Congress proposes further to extend the cloak of immunity, not merely over racketeering offenses, as provided in H.R. 3021, but, as provided in H.R. 1246, over "any matter which affects interstate or foreign commerce or the free flow thereof."

We call to the committee's attention the broad sweep of the phrase "interstate or foreign commerce" in H.R. 1246. If such a provision were inserted into the Immunity Act, the privilege against self-incrimination contained in the fifth amendment would be, in effect, repealed. Congressional hearings, grand jury proceedings, and criminal prosecutions having the slightest relationship to transportation, labor, business, and finance would come within its scope. As we well know, there are scant areas of our economy that fall outside the definition of "interstate and foreign commerce." We trust that this Congress does not intend to enact a measure whose substantial effect would be to amend the Constitution, a task which may be effected only by ratification by the States.

But we object as well to the narrower terms of H.R. 3021 which would be limited in application to the labor racketeering offenses contained in section 1951 of title 18 of the United States Code (the Hobbs Act), and section 186 of title 29 of the United States Code.

This bill presumably grows out of the broad investigations conducted by the McClellan committee into labor racketeering and the frequency with which witnesses before that committee invoked the privilege against self-incrimination.

Although legislation has been adopted to deal with labor racketeers, the introduction of this bill is a sign of Government insecurity for it implies that we are powerless to detect and punish wrongdoers in conformity with criminal due process. We do not believe that our Government has become so impotent that it must thus sacrifice its dignity.

If this bill is passed, and if witnesses are compelled to testify, what will be achieved is trial by publicity resulting in the mutilation of reputation of those who have not been indicted or convicted of a crime. Such practices are contrary to the entire purpose of due process of law which guarantees that a person is presumed innocent until proven guilty in a judicial forum.

If crimes have been committed, our law enforcement agencies, both State and Federal, are charged with the duty of apprehending the criminals. If it is believed that crime is flourishing undetected, we urge that the remedy does not lie in stripping a portion of our citizens of the right not to be compelled to bear witness against themselves. Stricter law enforcement and improved methods of detection would be the wiser remedy, for if crimes are in fact being committed in this area, vigorous measures must assuredly be taken, but not at the expense of long-held and cherished constitutional rights. Dean Erwin N. Griswold, in his famous reaffirmation of the privilege against self-incrimination, "The Fifth Amendment Today," described the privilege in the following words, to which we subscribe:

"If we are not willing to let the amendment be invoked, where, over time, are we going to stop when police, prosecutors, or chairmen want to get people to talk? Lurking in the background here are really ugly dangers which might transform our whole system of free government. In this light, the frustrations caused by the amendment are a small price to pay for the fundamental protection it provides.

"One of the functions of government, based on long experience, is at times to protect the citizen against the Government. This function has been performed, to some extent, by the fifth amendment, although not always perfectly, and not always without some loss to legitimate Government interests. While protecting the citizen against the Government, the fifth amendment has been a firm reminder of the importance of the individual."

"\* \* \* [T]he fifth amendment can serve as a constant reminder of the high standards set by the Founding Fathers, based on their experience with tyranny. It is an ever-present reminder of our belief in the importance of the individual, a symbol of our highest affirmations \* \* \*" (p. 81).

H.R. 5230

The purpose of this bill is to provide that a conspiracy whose purpose is to commit an organized-crime offense against any of the several States shall be a Federal crime when, in furtherance of the conspiracy, the channels of interstate commerce are utilized.

Our objection to this bill rests on the increasing use by the Government of the weapon of the lazy prosecutor—the doctrine of conspiracy. Mr. Justice Jackson's concurring opinion in *Krulwitch v. United States*, 336 U.S. 440, 445 (1949), is perhaps the best—and certainly the most familiar—indictment laid against the increasingly frequent use of the conspiracy doctrine. The entire opinion bears close reading; we quote but a short portion of it here.

"This case illustrates a present drift in the Federal law of conspiracy which warrants some further comment because it is characteristic of the long evolution of that elastic, sprawling, and pervasive offense. Its history exemplifies the 'tendency of a principle to expand itself to the limit of its logic.' The unavailing protest of courts against the growing habit to indict for conspiracy in lieu of prosecuting for the substantive offense itself, or in addition thereto, suggests that loose practice as to this offense constitutes a serious threat to fairness in our administration of justice.

"The modern crime of conspiracy is so vague that it almost defies definition. Despite certain elementary and essential elements, it also, chameleonlike, takes on a special coloration from each of the many independent offenses on which it may be overlaid. It is always 'predominantly mental in composition' because it consists primarily of a meeting of the minds and an intent" (pp. 445-448).

The last effort of the Federal Government to catch a large number of alleged racketeers in a conspiracy fish net ended in total failure. We refer, of course, to the so-called *Apalachin* case. The evil of the *Apalachin* case, as would be the evil of a prosecution instituted under H.R. 5230, in the substitution of an "elastic, sprawling, and pervasive offense" in place of the substantive offenses

such as narcotics, prostitution, or murder that are included within the definition of an "organized crime offense." It is true that the State and Federal Governments have an inordinately difficult time proving the commission of crimes by persons alleged to be in the upper hierarchy of organized crime. This, however, is no reason to dilute the judicial process. We suggest that the proper recourse is not a judicial fishing expedition but rather more efficient criminal detection and investigation by State and Federal law enforcement officers so that any person who is in fact violating the law may be vigorously prosecuted for the substantive offense itself.

#### *H.R. 6573*

This bill would forbid leasing, furnishing, or maintaining any "wire communication facility with intent that it be used for the transmission in interstate or foreign commerce of bets or wagers, or information assisting in the placing of bets or wagers, on any sporting event or contest \* \* \*."

Our objection to this bill rests upon its possible impact upon radio and television broadcasters who are clearly within the definition of "wire communication facility." This raises a troublesome constitutional issue, for the provisions of the bill present the danger of "inhibiting the freedom of expression, by making the individual more reluctant to express it," *Smith v. California*, 361 U.S. 147, 151. Presumably, reportage of the results of sports events and horseraces is included within the protection of the first amendment as news and it is, therefore, fair to say that any Government action which tends to discourage the transmission of an entire class of information, would betray the lesson of the *Smith* case. If radio and TV stations and networks were fearful of prosecution—no matter how remote under the statute—their tendency would be to exercise perhaps too much caution and excise their normal sports broadcasts.

Whether or not such consequences were within the intent of the drafters of the bill, we urge an amendment to exclude from its application any broadcast over a regularly licensed radio or television station.

#### *H.R. 3246 and H.R. 6571*

It is the purpose of these bills to prohibit the transportation in interstate or foreign commerce of the tools of the bookmaking and numbers trade. Of the two bills, H.R. 6571 is less objectionable from our civil liberties standpoint for two reasons: (1) it requires that the accused knowingly perform the prohibited acts, and (2) more specifically describes the items which are forbidden in interstate or foreign commerce, rather than merely using the uncertain term "paraphernalia" as does H.R. 3246. Nonetheless, we believe that H.R. 6571 and H.R. 3246 are dangerously vague in one respect which justifies their rejection unless satisfactorily amended.

Under the provisions of each of these bills, it is possible that its terms would be satisfied if an individual known to be engaged in gambling activities was seized in interstate commerce in possession of a copy of the *Morning Telegraph* or the *New York Times*, each of which report the racing results in some detail, or a copy of the *Wall Street Journal* which carries extensive financial reports, said to be the source of the daily "number." There is no indication that such an irregular purpose was in the mind of the draftsmen, but that the language may be so read calls for clarification to avoid the bill's application in a situation which would do a disservice to the freedom of the press. We suggest that the bill be amended to exclude its application to newspapers and other media which come within the meaning of the word "press" as used in the first amendment. Of course, what we said in the preceding section concerning *Smith v. California* applies with equal force here.

AMERICAN CIVIL LIBERTIES UNION,  
New York, N.Y., July 11, 1961.

HON. EMANUEL CELLER,  
*House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN CELLER: We have previously submitted a memorandum to the Judiciary Committee dated May 31, 1961, relating to the administration's antiracketeering proposals. Since that time our staff has further considered those proposals and has concluded that there are civil liberties objections to H.R. 3023 and H.R. 6572 which we did not earlier raise. We enclose a memorandum on these two bills and ask that it be included in the record.

In addition, we ask that our earlier memorandum be corrected deleting the three sentences of the top paragraph on page 5 beginning with the words "The decision as to guilt \* \* \* etc."

Sincerely yours,

PATRICK MURPHY MALIN,  
*Executive Director.*

SUPPLEMENTARY STATEMENT OF AMERICAN CIVIL LIBERTIES UNION ON  
ANTIRACKETEERING BILLS

S. 1654, H.R. 3023

The American Civil Liberties Union urges that this bill amending the Fugitive Felon Act (8 U.S.C. 1073) not be adopted unless amended to bar its application in cases where a judgment of conviction or acquittal has been rendered for the same act or acts under the laws of any State. Such an amendment would in no way affect the purpose of the bill, which is to aid the States in the enforcement of their criminal law. This is to be accomplished by broadening Federal criminal jurisdiction over persons who cross State lines in order to avoid State prosecution or confinement. The laudable purpose of this bill is, of course, intended to be accomplished by Federal and State cooperation in a single prosecution, regardless of whether that prosecution be in a Federal or State court. There is no intention to try a man twice for the same conduct—once in the State court and once in the Federal court.

Yet such double jeopardy would be possible under the bill as now drawn. Nothing in the Constitution prevents such a result, according to the decisions in *Bartkus v. Illinois*, 359 U.S. 121; and *Abbate v. United States*, 359 U.S. 187 (1959), even though the decisions of the Supreme Court in those cases said that the result was one "with which the court is in little sympathy."

Following those decisions, Attorney General William P. Rogers, issued a memorandum (April 6, 1959) to the U.S. attorneys stating that "no Federal case should be tried when there has already been a State prosecution for substantially the same act or acts without the U.S. attorney first submitting a recommendation to the appropriate Assistant Attorney General in the Department. No such recommendation should be approved by the Assistant Attorney General in charge of the Division without having it first brought to my attention." The then Attorney General apparently believed that the question of whether there should be double jeopardy ought to be left to his discretion. But it would seem dubious policy to give the prosecutor so much discretion as to be able to decide that a man should be tried over again after conviction or acquittal.

Not only former Attorney General Rogers and the Supreme Court show antipathy to the practice of duplicate trials, but 16 States bar a second prosecution if the defendant has already been tried by the Federal Government. Illinois was included in 1959 (ch. 38, Ill. Rev. Stats., sec. 601.1). The other State statutes are listed in the American Law Institute's Model Penal Code, Tentative Draft No. 5 (1956), p. 61, which recommends the same rule. In the *Bartkus* case, on p. 139, the Supreme Court said that "experience such as that of New York (one of the 16 States) may give aid to Congress in its consideration of adoption of similar provisions in individual Federal criminal statutes or in the Federal criminal code," and pointed out that "In specific instances Congress has included provisions to prevent Federal prosecution after a State prosecution based upon similar conduct."

- 18 U.S.C. 659 (stealing goods in interstate or foreign transit), and
- 18 U.S.C. 660 (stealing by an employee of an interstate carrier), and
- 18 U.S.C. 2117 (burglary of vehicle of interstate or foreign shipment).

all provide:

"A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts."

In addition, the bill also proposes a penalty of \$5,000 and/or imprisonment of 5 years for crimes that the States themselves have judged may be serious enough only to warrant a 1-year sentence. Certainly this blanket kiting of a penalty, without consideration of the various crimes, raises some serious substantive due process questions. In some States, for example, there are crimes which are considered felonies, which are not even considered crimes in other States. Yet, under this bill, an individual who violates its provisions would be

subject to 5 years' imprisonment or a \$5,000 fine, or not be subject to anything, depending on his luck in choosing the State in which he committed a certain act. In both cases, the controlling feature is not well-thought-out Federal legislation, but the vagaries of the various States' criminal laws.

*S. 1653, H.R. 6572*

This bill prohibits travel in interstate or foreign commerce with intent to: "(1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity." We believe that the broad and ambiguous sweep of the bill's provisions, coupled with its impact upon the freedom to travel (see *Edwards v. California*, 314 U.S. 160; and *Kent v. Dulles*, 357 (U.S. 116), requires the conclusion that it not be adopted.

Underlying the bill, we believe, is the same theory frequently invoked to justify the ever-increasing use by prosecutors of the doctrine of conspiracy. That theory states that if an individual cannot successfully be prosecuted for a substantive offense, he can perhaps be caught in the "elastic, sprawling, and pervasive offense (of conspiracy)" *Krulowitch v. United States*, 335 U.S. 440, 445 (Jackson J., concurring). Here, likewise, the bill implies that municipal and State law enforcement agencies are unable successfully to prosecute persons engaged in organized racketeering but that the Federal Government will be able successfully to prosecute the same individuals for acts in furtherance of their "unlawful activity" if they engage in interstate or foreign commerce in the process.

We think the bill is a devious effort to compensate for poor law enforcement. For example, under section (a) (2) it is a crime to travel in interstate or foreign commerce with intent to commit any act of violence to further any unlawful activity. Putting to the side the vague content of the term "crime of violence" (is a threat to commit assault such a crime) the elements of the offense will clearly require the Government to prove that the accused was associated with the "unlawful activities" enumerated in section (b). Just what degree of association will be required to satisfy the statute will have to await adjudication, but whatever the degree, it would appear that at least enough should have to be shown so that with some further police investigation not only the accused but his colleagues could be prosecuted for a substantive State offense. On the other hand, it may be the intention of the Government to construe the statute to allow evidence to be introduced which is so "elastic, sprawling, and pervasive" that it will not be clearly proven that the accused is a participant in "unlawful activity" but merely will implicate him by innuendo at worst, and inconclusive evidence at best.

The recent *Apalachin* case in New York (see *United States v. Bufalino*, 285 F. 2d 408) is a notorious example of the use of too ingenious theories that seek to shortcut the criminal law in our Federal system. It should stand as a warning that the judiciary will not quietly acquiesce to inroads in the fair administration of our criminal law.

There is an additional objection to the contents of this bill that more clearly impinges upon the freedom of travel to which we have referred. As we read the proposed legislation, its principal elements are twofold: (1) Intent to perform one of the enumerated acts in furtherance of an "unlawful activity," and (2) the act of traveling in interstate or foreign commerce under the influence of the requisite intent.

A leading treatise on criminal law says this concerning the elements of a criminal offense:

"To constitute a crime there must be in every case an act which is regarded as criminal. No crime is committed by a harboring of thoughts of malice or intent not accompanied by any act at all or by acts which would be regarded as merely preparation to commit an offense, but not in themselves an offense. Thus, the mere intent to commit a crime is not in itself a crime, when no act has been committed to achieve that intent nor any conspiracy formed for its accomplishment" (1 Wharton's Criminal Law and Procedure 143).

Mr. Justice Holmes was of the same mind:

"Intent to commit a crime is not itself criminal. There is no law against a man's intending to commit a murder the day after tomorrow. The law only deals with conduct" (The Common Law (Little Brown 1881) 65).

We think that this bill couples bare intent and the constitutionally protected right to travel and attempts to convert the result into a crime to the derogation

of the Constitution. We do not mean to imply that interstate travel can never be used as the basis for invoking Federal criminal jurisdiction; the Mann Act, for example, attests to the fact that it can. But the crucial difference here was foretold in *Caminetti v. United States*, 242 U.S. 470, 491, which upheld the constitutionality of the Mann Act.

"It may be conceded, for the purpose of argument, that Congress has no power to punish one who travels in interstate commerce merely because he has the intention of committing an illegal or immoral act at the conclusion of the journey. But this [Mann] Act is not concerned with such instances. It seeks to reach and punish the movement in interstate commerce of women and girls with a view to the accomplishment of the unlawful purposes prohibited."

Thus, in *Caminetti*, the Court upheld the statute in issue because there was more than interstate travel plus intent—the travel was the very means by which the concrete objects (women, in that case) were transported for the forbidden purpose. S. 1653, and H.R. 6572, however, calls for no such transportation of a concrete object to be used for the forbidden purpose (with the possible exception of sec. (a) (1)), but rather attempts in vacuo to ordain as a crime travel plus bare intent to perform an act which is probably criminal within the State for which the traveler is destined as well as that whence he came.

We suggest again that bills such as this which attempt tortuously to include within Federal law conduct which does not constitutionally belong there, deserves the ends of justice by playing fast and loose with due process of law.

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RICHTER, LORD & LEVY, PHILADELPHIA, PA.

We have had the benefit of several statements made before this honorable committee with respect to the constitutionality of some of the proposed legislation relative to the shipment in interstate commerce of various items that might be used as a source of illicit income by organized crime. We have no quarrel with the motive behind the legislation. All organized crime is an organized threat to society and should be stamped out.

We, too, are very seriously troubled as to the constitutionality of some of this proposed legislation. Suffice it to say that the statement by Martin M. Nelson, Esq., sets forth very clearly grave problems relating to the constitutionality of this legislation. There is nothing to be gained by our repeating the several issues he raised so succinctly. We direct our thoughts in an entirely different avenue.

Assuming that the various pieces of legislation would be held to be constitutional, we are not certain at all that the results to be achieved by such wide-sweeping and all-inclusive legislation will be corrective at all. It may in fact create the exact contrary result. There are certain tests by which we should measure each bill. We should consider each of the various prohibited items on its own. Each should be considered in the light of whether in fact it had in the past been used as a means of producing illicit income by criminal organizations. It may well be that some of the mechanical gambling devices have been used for such improper purposes. We do not direct our comment to such items as we are willing to concede that slot machines for instance have been used as a source of income by various criminal syndicates. Perhaps policy and bolita games have likewise been instrumentalities through which illicit income has been produced by such organizations.

Gambling is recognized as a constant form of entertainment by vast numbers of people in the United States and indeed in all parts of the world. The urge, desire, and indeed need to gamble will not be stamped out by these proposed laws. Legislation has never succeeded in any part of the world by so doing. However, our American society requires that such conduct be kept upon a strictly local basis. It is in the interest of our society that there be no vast interstate complexes controlling these activities. The offense, if it be an offense in any given community should be one punishable by the State in which it occurs. To attempt to remedy purely local gambling by Federal legislation is to belittle the dignity of the U.S. Government. Indeed, we know that in many States various types of activities which in another might be labeled gambling are considered

legal and in accord with the proprieties, the social customs, and the mores of the particular communities. It would certainly be an unseemly and unbecoming sight to witness the docket of each of the district courts of the United States loaded with criminal indictments relative to gambling activities relating to such things as the sale of punchboards or their numerical components in the local candy, grocery, or cigarstores. To enforce such laws nationally would mean the employment of many thousand special agents of the Treasury Department as well as of the Justice Department. The several U.S. district attorney's offices would need to quadruple their staffs in order to draw bills of indictment and try the cases. Truly important litigation presently heard in the U.S. district courts would have to be shuffled to one side so that the courts could keep up with the dockets relating to these petty offenses. Indeed Congress would place itself in a most contradictory position if on the one hand it loaded up the dockets of the United States with indictments on charges of conspiracy by grocers, candy, and cigarstore operators who sold numbers off of a punchboard to their customers who came in to buy a cigar or cigarettes or a box of candy, and yet at the same time was considering legislation which would reduce the amount of diversity litigation in the courts in an effort to reduce the backlog of legal and substantial cases in the several district courts. Important litigation is involved in those latter cases, cases involving the happiness, safety and welfare of the public, cases in which the sums involved run into hundreds of millions of dollars annually, that raise important legal questions, that are the subject of study and scholarship in the law schools and in the courts of the United States.

The passage of the suggested legislation would receive the same acceptance by the public at large as did the passage of the Volstead Act. Its unpopularity would be overwhelming. Its sponsors in Congress would become the targets of criticism and ridicule. Let us consider who it is that uses punchboards. An analysis of the sale of punchboard manufacturers reveals that almost 80 percent of all punchboards are sold to churches, synagogues, American Legion posts, Veterans of Foreign Wars posts, and other military groups as well as to various charitable groups devoted toward obtaining funds for research in diseases of the heart, the lungs, blood, cancer, and other physical ailments. There is no personal gain, therefore, in the sale of the vast majority of the punchboards that are manufactured in the United States today and sold through legitimate wholesale dealers to these charitable organizations. Approximately 20 percent are sold to storekeepers who use these punchboards to encourage the sale of legitimate merchandise. As an example, a small candy store dealer who uses the punchboard gives a 5-cent Easter egg for each number punched with an opportunity to the few winners to obtain a 50-cent or a dollar Easter egg for the same nickel that he pays for the individual number punched. This gamble is at the expense of the storekeeper. But it proves profitable to him, for if he can sell 90 nickel pieces of candy faster by offering his customers a chance to win 10 bigger ones, he has increased his sales through this mode of sales promotion.

There is no difference between this and the furniture store which gives as a premium an extra hassock or a television table or some other item with the sale of a television set. The same is true in most of the other stores that use punchboards as a means of encouraging and promoting sales.

Now there is no doubt that there is a small minority of stores in which punchboards are used as a means of true gambling. A person buys a chance for a dime. They get no merchandise for it, but if lucky they may win the right to pick up merchandise worth \$5. This is local petty gambling. If this be a crime at all, it should be punished by State authorities, rather than invoking the commerce clause to burden already overburdened Federal authorities. The sovereignty and dignity of each individual State in this respect should be respected by the Federal Government. It calls for no Federal intervention nor for the great power of the Federal Government to become so involved.

Beyond this, the prevention of the shipment of punchboards in interstate commerce by the Federal Government will deprive many truly worthy causes, charitable and church organizations of funds for the fulfillment of their purposes.

We have had the privilege of reading the very excellent statement by the Attorney General before your committee on May 17, 1961. It is understandable that nowhere in that report has the general cited any situations involving punchboards which are by their very nature innocuous and harmless articles.

It is of vital importance that this committee carefully differentiate between recognized implements such as slot machines used by organized crime to raise illicit income, and simple articles of amusement to which no public stigma attaches such as the openly used punchboard at a church bazaar.

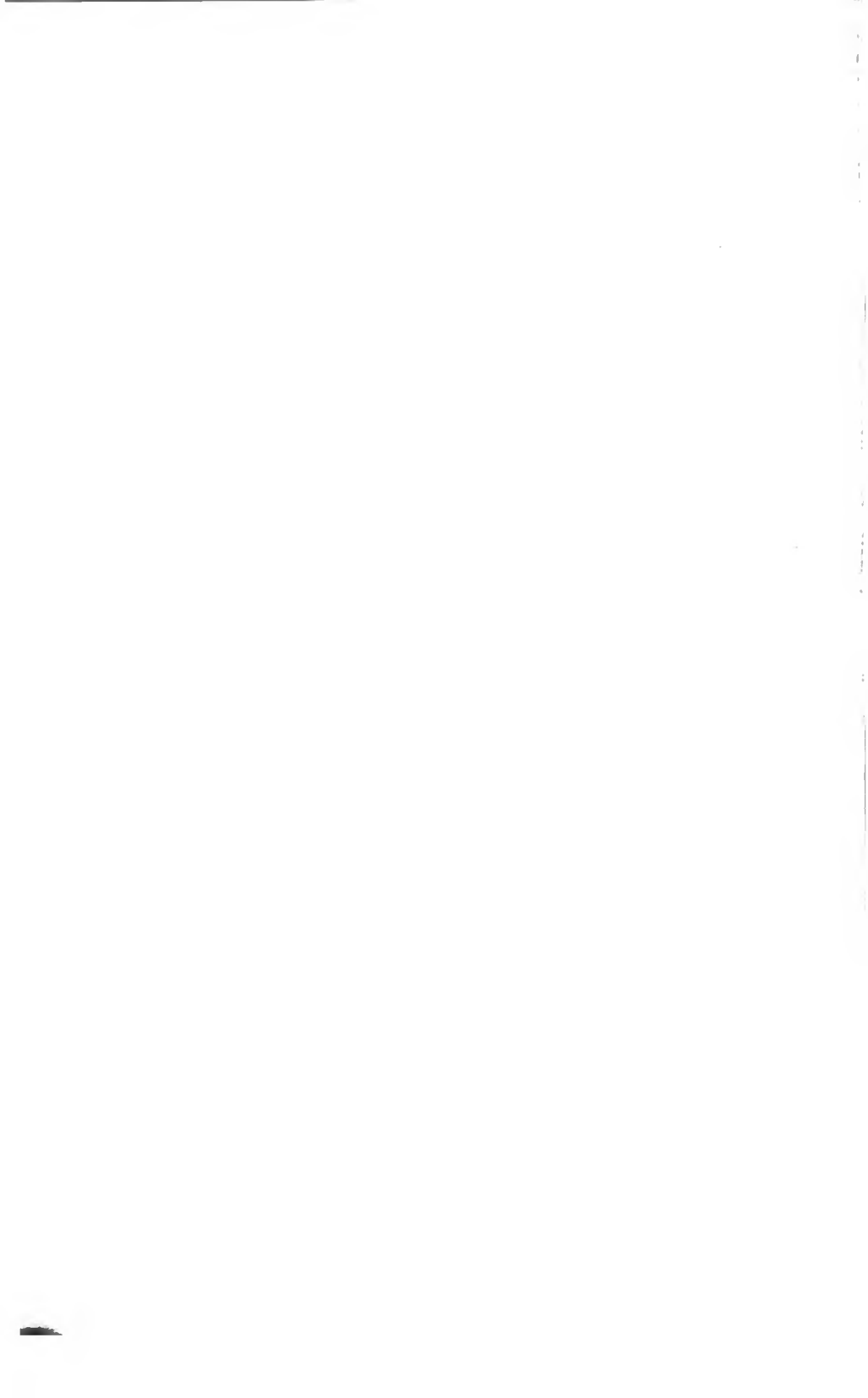
If the sum total of the Attorney General's very commendable action in seeking to stamp out organized syndicated crime is to have its full meaning, it must not allow itself to be diverted into petty channels where the flow and cost of effort and time will render negatory the entire enterprise.

















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